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NOTES

ON

THE SECOND

PLENARY COUNCIL

OF BALTIMORE.

BY

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PREFACE.

THE desire of gradually introducing in this country, as far as practicable, the ecclesiastical discipline prevalent throughout almost the entire Church, was strongly and repeatedly expressed by the Fathers of the late National Council of Baltimore. Its Decrees tend both avowedly and implicitly to promote the accomplishment of this object.

In our seminaries, Canon Law is receiving closer attention than was formerly accorded to it.

When professor at the seminary of this Diocese, I was requested by its worthy rector to explain to the students of theology the "Acts and Decrees of the Second Plenary Council of Baltimore," as also the Statutes of the Diocese.

I cheerfully complied with this request:

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the more so, as it chimed in with a natural inclination I felt for this study.

To make the instructions profitable, I found it necessary to elucidate the general principles upon which ecclesiastical law is based; the sources whence it originates —the constitution and hierarchy of the Church.

Having premised these, I entered upon my real task, that of setting forth the Decrees of Baltimore.

But to render this class still more interesting for my students, I conceived the idea of succinctly illustrating the principal points of ecclesiastical jurisprudence, taking the Second Plenary Council of Baltimore as the text and groundwork of my lectures. When feasible, I referred to and commented on the Diocesan Statutes.

This order has not been changed in the present volume.

While, on the whole, this method differs but immaterially from that of other Canonical text-books, it seemed to possess the advantage of allowing the author systematically to propound the Decrees of Baltimore,

and thus to adapt the principles of ecclesiastical jurisprudence to our American institutions. These pages have been written in none other than the most friendly spirit toward our venerable Episcopate.

No pretensions to exhaustive erudition, laborious research, or deep learning are made. This little work only aspires to the honor of contributing but an insignificant mite to a branch of ecclesiastical lore, the cultivation of which must materially conduce to the welfare of the Church in America.

To induct into this country Canon Law in its old form, may not be altogether practicable.

Ours is a land in which the Church is placed in peculiar circumstances. Religion is only building up as yet. There are no long-established usages to go by, and no well-defined precedents to follow; while in most parts of Europe, Catholic faith has ruled supreme for generations.

While therefore striving to adhere as closely as possible to the spirit of the Common Law of the Church, we may be

obliged at times to deviate from it as to the letter.

This adaptation of Canon Law to our country, it seems to us, has been admirably brought about by the late Plenary Council of Baltimore.

We propose in these notes, to call attention to the chief features of interest, of this Council either entirely passing over other matters of less note, or touching but slightly on them.

The principles underlying ecclesiastical jurisprudence, are, like those of moral theology, unchangeable, and the same in every country: their application, however, is different, accidentally at least, in the various parts of the Christian world.

The principles themselves of Canon Law flow from the essential constitution of the Church; hence they are as fixed as is the essence of the Church. I am not one of those who think that the combined wisdom of nineteen centuries, as concentrated in ecclesiastical jurisprudence, is wholly inapplicable to this country, or altogether out of date — that we need a system of ecclesiastical legislation

entirely distinct from that which was laid down by the fathers of the Church, and the immortal pontiffs of old.

While it may be said that Canon Law is, to a certain limited extent, the outgrowth of circumstances of time and place, yet it must not be forgotten, that everywhere exists the same Church, the same hierarchy, and, in consequence, substantially the same relation between bishops, priests, and laity.

It has been our endeavor, in these pages, to dwell more at length upon questions of practical moment, than amuse our readers with speculative disquisitions — to be clear and succinct of speech, rather than eloquent and flowery.

While the subject in hand may be of more specific interest for our esteemed readers of the clergy, we think that it will not be altogether void of attraction to the intelligent perusers of the laity.

It seems to us a mistaken notion to confine theological studies to ecclesiastics. Secular persons will never lose in faith by a thorough acquaintance with every branch of clerical erudition. Clear knowledge of

Christianity is the basis of firm belief: accurate cognition of ecclesiastical jurisprudence is conducive to prompt submission to its injunctions.

PATRONAGE OF ST. JOSEPH,
April 26, 1874.

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NOTES ON THE SECOND PLENARY COUNCIL OF BALTIMORE.

CHAPTER I.

Of the Nature of Canon Law.

See Soglia, Jus Eccl. lib. i. tom. i. c. i. § 2 seq.: Walter, Kirchenrecht, Introd. § 1 seq.: Reiffenstuel, Jus Eccl. tom. i. Procem. § 1–3, p. 1–5 seq.; § 9, p. 156; § 10, p. 181 seq.: Blackstone's Comment. Introd. sec. i. ii. iii. p. 1–20.

§ 1. NATURE AND SCOPE OF ECCLESIASTICAL JURISPRUDENCE.

1. WHAT is Canon Law? The term "canon" means a rule or guide. In the present case, it signifies the rule or guide to eternal life. It may therefore be defined:

"A collection or body of the canons or laws of

faith, morals, and discipline, prescribed to Christians by a competent authority, that is, the Church." (SOGLIA, l. c. cap. i. lib. i.)

Again:

"Jurisprudence in general, as a science, means a system of laws, by which a society is enabled both to preserve its existence and attain its end. By ecclesiastical jurisprudence, therefore, we understand the system of laws, by which the Church of Christ is regulated, so as to furnish her with means to conserve her being in a fitting manner and reach her end." (TARQUINI, Jus Eccl. Publ. p. 1, Romæ, 1868.)

"The term 'law' is used in different meanings. First, it is taken for the laws themselves or enactments: again, it is applied to the science or also knowledge of laws and constitutions; and in this sense, it appropriately signifies jurisprudence."

"As far as we are concerned, the term 'law' (jus) chiefly denotes the laws themselves, no less than the science of laws, although, strictly speaking, there is some difference even between these two." (REIFF. Jus Can. Univers. tom. i. Procem. § 1. p. 1–3.)

Law is properly defined:

"A reasonable rule of action for the attaining of the end of a society, and imposed in an obligatory manner, upon its members, by the one, in whom its power resides." (TARQ. l. c. p. 11–12.)

Canonists generally divide law into:

1. Divine or revealed law.
2. Law of nature.
3. Law of nations.
4. Civil law.
5. Ecclesiastical law.

Blackstone says:

"Of laws so understood, there are four kinds:

"1. The revealed law.

"2. The law of nature.

"3. The law of nations.

"4. Municipal or civil law." (BLACKST. Introd. sec. ii.)

Blackstone, as appears from the above, does not distinguish between revealed law and ecclesiastical law, whilst canonists carefully do so. For, ecclesiastical is not always revealed.

"From the eternal law, as from their primary source, all other laws are derived."

"The eternal law, inasmuch as it is the origin of all other laws, is the act of the Divine intelligence, by which God conceives and establishes with the intent of binding, some practical, necessary, and immutable rules to be observed by creatures." (RIEFF. Jus Can. vol. i. p. 2. n. 12.)

In like manner, Blackstone maintains:

"All laws ultimately rely on the same authority, the will of God." (Comm. Introd. sec. ii.)

2. We may further inquire what law itself signifies.

"Every rule," says Blackstone, "whereby any sort of action, whether necessary or voluntary, proceeds, is termed a 'law' of that action. But the term 'laws,' in the proper sense of it, is confined to the rules of voluntary action; or in other words, to the precepts dictated by competent authority, for the governance of man, a being endowed with both reason and free-will." (BLACKSTONE, l. c. p. 6.)

"Necessary action is that of natural agents; voluntary, that of intellectual ones; yet the rules which each do or ought to subserve, are termed indifferently, laws. Gravitation, magnetism, and electricity, for instance, vegetable or animal economy, are systems of necessary action, the rules of which are called the laws of gravitation, magnetism, and electricity, the laws of vegetable or animal economy, respectively: religion and civil government are systems of voluntary action, the rules of which are respectively denominated the laws of religion, and the laws of civil government.

"But natural agents can do no other than conform; and their subservience is not virtue, but regularity: rational agents possess power (to be exercised at their own peril) of non-conformity; and their obedience is not order, but merit. Thus the term 'law' applies to the two classes of action in different senses; it is

strictly appropriate only to the rules of voluntary conduct; when it is employed to express those of necessary action, it either advances natural into moral agents, or loses its own essentially inherent ideas of free agency and accountableness." (BLACKSTONE, Introd. sec. ii. note, p. 5–6.)

The term law, as is evident, is taken here in a restricted meaning. Canon law consists of the laws of the Church as explained, systematically arranged, and applied.

§ 2. DIFFERENCE BETWEEN CANON LAW AND THEOLOGY.

3. The difference between theology and canon law is that the former treats of principles in general; the latter regards their practical bearing on Christian society. Both, in fact, discourse on faith and morals. But the one does so in general, and in order to establish the rule of believing. Hence its chief effort is to demonstrate what is true faith and what is repugnant to it. The other treats of faith and morals as constituting the rule of our actions.

Again, moral theology considers virtue and vice from the stand-point of their gen-

eral goodness or malice, having relation chiefly to the tribunal of penance; while canon law has reference rather to the external ecclesiastical polity, viewing the faithful as forming an external community. It consequently also discourses on the office and dignities in the Church, and on the ecclesiastical hierarchy.

4. The ecclesiastical law differs from the civil with regard to its origin, end, and subject-matter. Civil law proceeds from God as the author of nature; ecclesiastical law, from God as the author of grace. The end of the former is temporal happiness; that of the latter, eternal bliss. The subject-matter of the one is earthly transactions; that of the other spiritual concerns. (SOGLIA, l. c.)

5. Canon law has reference to the Church, as a society instituted by Christ. It regards chiefly, therefore, its external element. Now,

"A society is a multitude of men combining together for the purpose of securing means to attain a common end. It is called perfect when it is complete in itself, containing within its own bosom adequate means to accomplish its object." (TARQUINI, l. c. p. 4.)

Four things must be considered in every society: 1st, the number of men composing it; 2d, their moral union; 3d, the end to which they aspire; 4th, the means of arriving at the end. Of all these, the end principally determines the character of the society itself.

The Church therefore is a supreme society, her end being supreme, that is, eternal happiness. And as this end can be subordinate to no other, so neither can the Church itself. The Church, moreover, is a perfect society; otherwise she would not possess those means that would enable her to save souls, which would be a defect in the will of her Founder. (TARQUINI, l. c. p. 35.)

Now a perfect society must be possessed of a threefold power: legislative, judicial, and coercive or executive.

"And again, every law, in order to attain its end of serving as a rule of conduct effectually, consists virtually of several parts: one declaratory, defining the rule; another directory, enjoining its observance; a third remedial, pointing out to persons injured thereby, modes of reparation; analogous to which remedial part is the vindicatory branch of the law,

annexing to the offence an adequate penalty." (BLACKSTONE, l. c. p. 10.)

6. Relation of Church and State.

The end of man is temporal welfare here, and eternal happiness hereafter. Hence there are but two perfect societies, the ecclesiastical and the civil. The one is perfect, and absolutely supreme. The other is perfect, and but relatively supreme.

Temporal felicity and pleasure cannot be absolutely supreme. They must be made subservient and conducive to eternal happiness. Hence neither is civil society absolutely supreme and independent of the Church. Its object is to promote directly the temporal welfare of man, and indirectly aid him in attaining his ultimate end. Hence, both civil society and the Church are compared with the soul and body of man. There exists between them a close union, and a constant harmony, and they continually assist each other. So should the Church and State stand in relation one to the other. Unhappily, modern governments have almost everywhere rendered this union impossible. They acknowledge

no superior law. The State is proclaimed omnipotent; law itself, atheistic. Thus has society emancipated itself from the Church, and thus it stands in open revolt against God himself. Whatever may have been the defects of former governments, however greatly they may have interfered with and hampered the free action of the Church, they, at least, never proclaimed the principle that the State was God. This was a pagan axiom. The Liberals of the nineteenth century have unearthed it once more, and clothed it with imperial majesty.

§ 3. DIVISION.

7. Canon law is divided into three parts: the first treats of persons; the second, of things; the third, of ecclesiastical judicature.

The first part comprises the entire hierarchy of the Church in all its forms; its various functions; the rights and prerogatives of the clergy.

The second treats of the sacraments, sacred vestments and vases, rites and ceremonies, temples, chapels, monasteries and

religious houses, cemeteries, and church property in general.

The third discourses on the judiciary of the Church: explains its legislative, judicative and coercive power; the manner of conducting ecclesiastical cases and trials; also the persons and causes that fall under its jurisdiction.

8. Another distinction is that of public and private ecclesiastical law. The former treats of the officers and rectors of the Church, in their official capacity, and in general of whatever pertains to the entire body of the Church. As their functions and prerogatives must be determined by the nature of the ecclesiastical polity, it follows that public law or jurisprudence has for its object (*a*) the nature and inherent powers of the Church as a supreme and perfect society instituted by Christ; (*b*) the duties and rights of its various rulers. Hence it is defined:

"That part of ecclesiastical jurisprudence which has reference to the entire Church, and settles the rights and duties of its rectors." (SOGLIA, l. c.)

Private ecclesiastical law regards the rights and duties of the laity. (Ib.)

9. Some canonists differ from this division. Still, to us it seems to be an easy and natural one, being based upon the essential constitution of the Church, all of whose members belong either to the clergy or to the laity.

10. Again, canon law, viewed with regard to those on whom it is binding, is termed common and particular. (TARQUINI, cap. iii. p. 131, l. c.)

The common law is obligatory on all the faithful spread throughout the world. The particular or special law is that which is made for a particular locality, diocese, or province only, and binds not outside of them. Such are provincial, national, or synodal decrees and statutes. (REIFFENSTUEL, l. c. Procem. n. 48, § 3.)

11. It is again divided into written and unwritten law. The former includes all positive legal enactments, properly registered; the latter, custom and tradition. Canonists fitly designate this distinction when they say: "Omne jus legibus et moribus constat." (REIFF. tom. i. p. 6.)

The written law is again either common or particular, as containing prescriptions

binding on all the faithful or only on a part them.

The common written law comprises:

(*a*) The constitutions and decretal epistles of the Sovereign Pontiffs.

(*b*) Decrees of Ecumenical Councils.

The particular written law contains:

(*a*) Decrees of National Provincial Councils.

(*b*) Decrees and statutes of Bishops.

(*c*) Statutes and rules of Regulars.

(*d*) Decrees of Roman Pontiffs, made for particular localities only. (TARQ. p. 131.)

The unwritten law consists of traditions and custom. (TARQ. l. c. p. 132.)

12. A similar distinction obtains in civil law.

"The municipal (or civil) law," Blackstone says, "may be divided into two kinds, lex non scripta, the unwritten or common law; lex scripta, the written or statute law. The lex non scripta includes general customs, or common law proper; particular customs of particular places; particular laws, by custom observed.

"By leges non scriptæ are not to be understood laws, at present mostly oral, but only those the original constitution and authority of which are not set down in writing, as acts of Parliament are, and which

are valid by immemorial usage and universal reception." (BLACKST. l. c. p. 12.)

13. As will be observed in the above passage, a distinction is made in the civil law, which does not exist in, nay, is contrary to that of canon law.

Blackstone terms the lex non scripta, the common law. Ecclesiastical jurisprudence, however, makes law common or particular, according to the extent or reach of its obligation.

Again, ecclesiastical jurisprudence does not require "time immemorial" to make an unwritten law obligatory; a certain term of years only is necessary.

The laws or canons of the Church are threefold: canons of faith; canons of morals; and canons of discipline.

CHAPTER II.

Fountains of Ecclesiastical Jurisprudence.

14. THE fountain of a thing is that from which it is derived. Now the legislator is the one with whom the law originates. There are four different lawgivers in the Church: Christ himself, the founder and head of the Church; the apostles; the Roman pontiffs; the bishops assembled in council with the Pope. (SOGL. vol. i. chap. ii. De Font. § 14. p. 22.)

In a broad sense, however, canonists designate as sources of ecclesiastical jurisprudence, all such places, books, and documents as contain legal prescriptions of the Church: such are the Holy Scriptures and sacred traditions; the decrees and constitutions of the Roman pontiffs, and of ecumenical councils.

§ 4. CUSTOM.

15. Omitting the other parts, we shall

say but a few words on custom as one of the sources of canon law.

"Custom is a right induced by the manners and long-continued usages of nations with the express or tacit consent of the lawgiver." (SOGL. l. c.)

It is either in conformity with the law, "secundum legem;" or it is "præter legem," that is, beyond or outside the law; or finally "contra legem," that is, directly opposed to the law, so that the latter is either directly thwarted or rendered ineffectual by long-continued acts of an opposite character.

16. "A custom being proved to exist," Blackstone says, "we are next to inquire into its legality. To make a particular custom good, the following are necessary requisites." (BLACKST.)

(*a*) It must have been used so long that the memory of man runneth not to the contrary.

(*b*) It must have been continued.

(*c*) It must be peaceable and acquiesced in by all.

(*d*) Customs must be reasonable, or rather, not unreasonable; that is, they must not be opposed to any divine law.

(*e*) Customs, though originally established by consent, must be, when established, compulsory, not optional. (BLACKST. p. 17. l. c.)

17. With regard to a legitimate prescription, Blackstone requires that a custom "must have been in use so long that the memory of man runneth not to the contrary." This is the author's individual opinion. Many, nay, the greater part of ecclesiastical as well as secular jurists maintain that the space of ten years is sufficient to constitute a legitimate prescription, both in civil and ecclesiasticai law. This is held by Lessius, lib. ii. De Just. et Jur. cap. 6. n. 46; Lugo, disp. 6. De Just et Jure, sec. 6. n. 94; Azorius, part. i. lib. 5. cap. 18. quæst. 6; Castro-Palao, and a number of others.

The question is accurately ventilated by Reiffenstuel, lib. i. Decretal. tit. iv. p. 164. tom. i. edit. Venet. 1730.

18. Here the question may be put, whether custom suffices to acquire jurisdiction; such, for instance, as that of bishops dispensing with the general laws of the Church. (Ap. SOGLIA, vol. i. p. 36.)

It is a fixed principle of ecclesiastical jurisprudence, that the common or universal laws, such as the impediments of marriage, being made either by a general council or the Pope, can be dispensed with only by the Roman pontiff, who is the universal pastor.

Now, on the other hand, it is no less certain that bishops do claim by virtue of custom the ordinary privilege of dispensing with some of the impediments of marriage. Is their claim a legitimate one?

19. There are two opinions: the first replies in the negative:

"Against the Pope," says Suarez, "nobody can prescribe for things pertaining to his supreme power." (Def. Fid. Cath. lib. iv. c. 34. n. 18. See also Bened. XIV. De Synod. Dioc. lib. ix. cap. 2; Perrone, De Matrim. lib. ii. cap. iii. art. ii. p. 92 seq.)

The second answers affirmatively. See Gibertus, consult. 39, De Matrim. tom. 12; Van Espen, Jur. Eccl. Univers. part. 2. tit. 14. cap. i. n. 12.

§ 5. PONTIFICAL CONSTITUTIONS.

20. Another source of ecclesiastical law is found in the constitutions of the sovereign pontiffs.

The term constitution is used generally as synonymous with that of law. In this broad sense, pontifical constitutions are defined:

"All those decrees, ordinances, and decretal epistles of the supreme pontiffs, that are issued and promulgated by the Pope, as head of the entire Church." (SOGL. Jus Priv. prænot. c. ii. § 22. p. 44. vol. i.)

In a more restricted sense, it means the decrees of the pontiffs alone; in the wider signification, it comprehends all laws made either by the Pope or an ecumenical council.

21. A decretal epistle is thus defined:

"A decretal epistle is that which the Pope, either with or without the advice of the cardinals, dictates in reply to questions addressed to the Holy See." (REIFF. lib. i. tit. ii. n. 10. p. 63. vol. i.)

It is also termed a "rescript," being a written answer to some inquiry made to the Holy See.

"A simple 'decree' differs from a decretal epistle, the former being a sanction of the Pope not occasioned by, nor made in reply to any question." (REIFF. l. c.)

22. Blackstone takes delight in sneering at pontifical rescripts, when he tells us:

"In the canon law, the decretal epistles of the Holy See are 'rescripts;' arguing, contrary to all true forms of reasoning, from particulars to generals." (BLACKST. Introd. sec. ii. p. 11.)

This passage betrays either gross ignorance or profound malice with regard to the nature of pontifical "rescripts." No ecclesiastical jurist of note holds that they obtain the force of universal laws; and that consequently they argue from particulars to universals.

23. "Rescripts" have the efficacy of law "inter partes" only; that is, they are binding on those only for whom they were given. They may be applied to cases of a similar kind. But they are not "of themselves" universal laws, as they are not made for the entire community, nor solemnly promulgated.

In two cases only do they acquire the force of common laws; namely, (*a*) when received by the Church into the body of the common law; (*b*) when they are explanations of a universal law. (REIFF. l. c.)

In both cases, it is not by virtue of being rescripts or of arguing from particulars to generals, that they become common law,

but by their solemn acceptation and promulgation.

24. But the great English jurist contradicts himself when he says:

"For established precedents must be abided by, as well to keep the scale of justice steady and even, as also because the law in that case being solemnly declared and determined, what before was uncertain and perhaps indifferent, is now become a permanent rule, which it is not in the breast of any subsequent judge to alter, whose province it is 'jus dicere, non jus dare.'" (BLACKST. Com. Introd. p. 13.)

Now do not precedents, we might retort, contrary to all forms of sound reasoning, consist in arguing from particulars to generals? What else are pontifical rescripts but precedents? Yet such is blind bigotry, even in a great English jurisprudent, that it will not hesitate to gainsay its own assertion when applied to an object hateful to it.

§ 6. PROMULGATION.

25. All agree that no law binds except when sufficiently made known to the subject. But the mode of promulgation is differently stated. Some hold it to be

sufficient that the papal constitutions should be published at Rome in order to be binding on all the faithful spread throughout the world; only, however, after such a lapse of time as will be necessary to make them sufficiently public in the respective countries.

26. Others require them to be formally promulgated in each province, nay, in each city. Whatever opinion one should choose to embrace, would seem to be but of little practical moment in "foro conscientiæ;" as all grant that no law obliges in conscience except when made sufficiently manifest to the subject.

Moreover, it is the common opinion of jurisprudents, that pontifical constitutions and decrees pertaining to matters of faith and morals, are but explanations of the divinely revealed law, and therefore become binding as soon as they come to the knowledge of the subject. (TOURNELY, Tract. de Leg. v. sec. 4.)

27. Hence the question agitated some years ago, immediately after the suspension of the late Vatican Council, whether the decrees and constitutions declaring the

Pope infallible in his magisterial or official capacity, were obligatory on the faithful immediately after the definition, or only after the absolute close of the council, the solemn subscription of all the fathers, and the formal promulgation, was irrelevant and out of place.

All must admit that the definition was a revealed truth, not a mere positive or disciplinary law. Therefore it needed no particular form of promulgation to make it binding in conscience. It is evident that as soon as any one is apprised of a divine law in a manner that leaves no doubt as to its existence, he is bound in conscience forthwith to believe it.

Yet it may be retorted that the only sure way of obtaining an incontrovertible knowledge of laws, even divine, is by their solemn promulgation formally made through the Church.

This objection may have had some weight several centuries ago. But with our modern facilities of communication, with our cables extending from east to west and from north to south, transmitting the news from Rome all over the

world in a few hours, such an argument cannot hold for an instant.

This objection is thus discussed by Archbishop Manning:

"The ninth—I will not say the last (attack on the definition of Infallibility), for who can tell what may still come?—is to affirm that the definition, though solemnly made, confirmed, and published by the Head of the Church in the Ecumenical Council, and promulgated urbi et orbi, according to the traditional usage of the Church, does not bind the conscience of the faithful till the Council is concluded and subscribed by the bishops.

"This last is the only remnant of the controversy now surviving. I can hardly believe that any one, after the letter of Cardinal Antonelli to the nuncio at Brussels, can persist in this error. Nevertheless it may be well to add one or two words, which you will anticipate, and well know how to use.

"1. A definition of faith declares that a doctrine was revealed by God.

"Are the faithful then dispensed from believing Divine revelation till the Council is concluded, and the bishops have subscribed it?

"I hope, for the sake of the Catholic religion in the face of the English people, that we shall hear no more of an assertion so uncatholic and so dangerous.

"2. But perhaps it may mean that the Council is not yet confirmed, because not yet concluded.

"The Council may not yet be confirmed because not yet concluded; but the definition is both concluded and confirmed.

"The Council is as completely confirmed in its acts hitherto taken, as it ever will or can be. The future confirmation will not add anything to that which is confirmed already. It will confirm future acts, not those which are already perfect.

"3. But perhaps some may have an idea that the question is not yet closed, and that the Council may hereafter undo what it

has done. We have been told that 'its decrees may have to be corrected,' and that two years elapsed before the ecumenical pretensions of the Latrocinium of Ephesus were formally superseded. Some have called it 'Ludibrium Vaticanum.'

"Let those who so speak or think, for many so speak without thinking, look to their faith. The past acts of the Council are infallible. No future acts will retouch them. This is the meaning of 'irreformable.' Infallibility does not return upon its own steps, and they who suspend their assent to its acts on the plea that the Council is not concluded, are in danger of falling from the faith. They who reject the Definitions of the Vatican Council are already in heresy." ("The Vatican Council," by H. E. MANNING, p. 45. 46.)

28. Of the promulgation of civil laws, Blackstone says:

"A resolution of the legislature is no law till this resolution be notified; but it may be notified in various ways, as by universal tradition and long practice, which supposes previous publication; or "viva voce;" or lastly by writing or printing; the mode of notification being immaterial, provided only that it be sufficiently public and perspicuous. After laws are prescribed in the usual and proper way, if the subject chooses to remain in ignorance of them, he must abide by the consequences of that ignorance." (BLACKST. Com. p. 8.)

With regard to the papal infallibility as defined by the late Vatican Council, Cardinal Antonelli declared in a letter to the Primate of Belgium, that it was to be

believed by all the faithful, without any further notification.

29. A case of conscience proposed some time ago, was as follows: A penitent refuses to believe in papal infallibility until it has been solemnly promulgated, because, as this penitent alleges, it is a probable opinion that no law binds except when solemnly promulgated in the various provinces and cities of the respective countries.

The solution is very simple. The penitent cannot be absolved, as he incurs formal heresy by his conduct, as has been sufficiently explained.

30. Again, the question has been debated, whether the ordinaries of the various dioceses have the right of reviewing pontifical decrees before promulgating them in their own dioceses.

Those who hold the affirmative are the Gallicans and followers of Richer. They say that each bishop was placed by the Holy Ghost to rule the flock intrusted to his care; hence he has the right of determining what is expedient or inexpedient for the faithful of his diocese. Therefore, say they, each bishop may examine pontifical

decrees, and if he finds them injurious to his diocese, reject them.

31. This opinion, as attributing to bishops any right whatever of reviewing or repudiating such laws, is at present utterly untenable. It has been defined by the late Council that the Pope has ordinary and immediate jurisdiction over the entire Church.

In matters of discipline, however, it may happen that decrees of sovereign pontiffs may be less adapted to one place than to another. In such a case the ordinary may remonstrate with the Pope and communicate to him the adverse circumstances, and thus have the law withheld.

32. In some countries of Europe, the "placetum regium" was in force; that is, the permission of the civil power had to be obtained before the pontifical decrees could be promulgated. To some Catholic princes this privilege had been accorded to a limited extent.

But afterward it was claimed as a right not merely by Catholic rulers, but even by Protestant princes. Thus but lately a law was passed in the Prussian Diet, making it

a penal offence for any bishop or priest to publish pontifical decrees, without having previously obtained the consent of the civil authority.

The Church, it is needless to say, can recognize no such rights in any secular power. She is supreme and independent, and therefore can admit of no intermeddling in her authority.

§ 7. COUNCILS.

33. A council is defined:

"A meeting of Catholic prelates, legitimately held, in order to discuss and define matters of faith, morals, and discipline." (SOGL. c. ii. § 33. p. 63. vol. i.)

To be legitimate, it must have three requisites: it must be properly convoked, rightly celebrated, and duly confirmed; in other words, a council must be called together by the Roman pontiff; it must be celebrated and presided over by him or his legates; and finally it must be confirmed by the same authority.

This applies more particularly to a general council. This volume being an introduction to a particular council, we

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will say a few words on the latter. Besides ecumenical councils, there are national or plenary, and provincial councils, and also diocesan synods.

34. A national or plenary council is a meeting of all the bishops of an entire nation or kingdom. It is convoked by the primate, patriarch, or prelate holding the place of a primate.

Now it may be asked, does the Archbishop of Baltimore, by virtue of the "prærogativa loci," possess the authority of convening a national council? We answer in the negative. The "prerogative of place" is simply a privilege of honor, not of jurisdiction, including no primatial rights whatever. It is merely, as the decree of the Holy See states:

"That privilege by which the actual Archbishop of Baltimore takes precedence of all the archbishops of the United States, without any regard to promotion or ordination; and by which he occupies the first seat in all councils, assemblies, and meetings." (Decr. Aug. 15, 1858.)

As is evident, this includes no jurisdiction whatever. National councils are also termed plenary, for the reason that the

entire or plenary episcopate of a nation is represented.

35. Provincial councils consist of the bishops of an ecclesiastical province; they are convoked by the metropolitan, and should be held every three years. (C. Trid. sess. xxiv. c. 2. Ref.) Formerly, also, graver questions bearing upon faith and morals were determined on by national and provincial councils. At present these matters are reserved to the Pope or an ecumenical council. These councils, therefore, are restricted to matters referring to the polity or administration of the respective nations or provinces.

36. This, however, does not preclude all questions of faith from being made the subject of their discussions. They may indeed explain, yet not define dogmas; they may promulgate, yet not make; they may discuss, yet not determine. This is well expressed by the Fathers of Baltimore:

"The chief duty of provincial as well as plenary councils, is not merely to provide for the promulgation and fulfilment of the general laws made in the ecumenical councils or by pontifical constitutions; but also to correct abuses . . . and guard the principles

of holy Church against the machinations of innovators.' (C. Plen. Balt. II. n. 57. p. 46.)

Their acts and decrees must be sent to Rome to be reviewed and approved before they can be promulgated, as Sixtus V. has declared.

37. Diocesan synods are held by the bishop and clergy of the respective dioceses. In them the decrees of national and provincial councils are promulgated; and diocesan disciplinary matters examined. The acts are not sent to Rome, nor is any further approbation necessary. The decrees or statutes may be promulgated forthwith. It is not a little encouraging to see that in many dioceses of the Union, bishops are holding such synods, and thus promoting harmony and good will between themselves and their priests. A law that is enacted with the consent or counsel of the clergy will assuredly meet with a ready and cheerful compliance. May we hope that this noble example thus set by many of our bishops will become the universal and permanent practice throughout these States?

§ 8. COLLECTIONS OF THE SACRED CANONS.

38. We come to another of the fountains of ecclesiastical jurisprudence, namely, the collections of the various decrees, constitutions, etc., termed canons.

We shall not dwell on the collections made by the fathers of the Eastern Churches; nor shall we speak of the primitive collections in the Western Churches, made by Dionysius Exiguus in the beginning of the sixth century. We pass to that of Isidor Mercator, or, as he is not unfrequently styled, Peccator. This collection was made in the early part of the ninth century. Besides the preface, it contains:

1. The order of celebrating a council.
2. Fifty canons of the apostles.
3. Epistles and constitutions of the earlier pontiffs, from St. Clement to Melchiades (†313).
4. Decrees of the Council of Nice (325), as well as of other councils, both Latin and Greek.
5. Decretal epistles of various succeeding Popes, from Sylvester (†335) to Gregory the Great (†731).

39. The authenticity of this collection has never been correctly ascertained. Suffice it to say, that it obtained the force of a genuine and authentic collection both in the Eastern and Western Churches. For seven hundred years, that is, from the ninth to the fifteenth century, all jurisprudents and theologians looked upon it as genuine. Cardinal Cusan, in the fifteenth century, was the first one who questioned and impugned its authenticity. The Centuriators of Magdeburg, a body of Protestant writers who flourished in the sixteenth century (1561), claim to have been the original discoverers of the imposition. That, however, this merit belongs to Cardinal Cusan, any one who will but examine his excellent work entitled "Concordantia Catholica," lib. iii. cap. 2, will easily ascertain.

40. Suspicion being once aroused, jurists and theologians of all shades began seriously to inquire into the character of this collection. The arguments adduced by them leave no doubt as to the spurious nature of the Isidorian collection. They may be summed up as follows:

1. The silence of the ancient writers.

For although the decretal epistles of the collection are chiefly directed partly to the laity, partly to the bishops of Germany, Italy, France, yet they are not mentioned by the eight previous Ecumenical Councils, nor by the old fathers and writers, nor by Dionysius the Little, who, it must be borne in mind, employed the utmost diligence in compiling his collection; nor, finally, by any other writers opposed to the papacy, whose greatest interest it would have been to allege them, had they really existed.

2. Several texts of Sacred Scripture, cited in the decretal epistles of the first three centuries, are taken from the version of St. Jerome, which did not yet exist.

3. Names such as archiflaminus, primate, archbishop, apocrysiarius, which were not in use in the first three centuries, occur in decrees of that period; while no mention whatever is made of the most important events of that epoch, such as the persecutions against the Christians.

4. False consular dates, consuls that never existed, and whose names never occur in the consular annals, are inscribed on many letters.

5. The rudeness of style, so different from the elegance of the more ancient writers; then the sameness of diction and phraseology, recurring in epistles purporting to have been written by different authors; moreover, the similarity in the arrangement of matter; all these show beyond doubt that they are forged.

41. But it may be asked whether all the documents are spurious. In answer to this, it may be said:

1. That Isidor made use of some authentic documents, such as the decretal letters, taken from the collection of Dionysius the Little.

2. He inserted many fictitious instruments, simply fabricated by himself, such as all the decretal epistles of the sovereign pontiffs from St. Clement to Siricius, and not a few from Siricius to Leo the Great.

3. He interpolated some genuine documents. Thus he foisted in the two last chapters of the epistle of Pope Vigilius to Profuturus. This whole question is ably discussed by the brothers Balbrini, De Antiquis Coll. Can. part. 3. c. 6. § 5.

42. As to the place or country whence

the collection of Isidor issued, some think it was from Spain. But there the collection of Isidore of Seville was used, and hence it is scarcely probable that it originated there. The next place assigned is the western part of France. In fact all the manuscripts of this collection are of French origin; the false decretals were first cited only by French writers.

43. The date of compilation of the Isidorian collection is no less uncertain. The Protestant writer David Blondel (1628) asserts that it contains passages almost literally transcribed from the Council of Paris, held in 829. It must have been therefore made at a later period. The same is shown with regard to the Council of Aix-la-Chapelle, in 836.

But in 857 its decrees are cited in a synodal letter of King Charles, so that the collection must have come into use between the years 829 and 857. (WALTER, Jus. Can. § 91.)

44. We shall now consider the influence this collection exercised on ecclesiastical discipline. It has been represented by De Marca (De Concord. Imperii et Sacerd.)

that by means of the false Isidorian decretal epistles, the episcopal as well as the secular authority was unduly depressed, their status materially changed, while the papal pretensions flowed from these decretals. This opinion was circulated throughout Germany by Febronius. Lately it has again been put forward by some Munich professors who refused to submit to the late Vatican Council.

Dollinger, in his famous declaration of March 28th, 1871, affirms that an accurate examination would prove :

"That the theory of Papal Infallibility had been introduced into the Church solely by a series of calculated inventions and falsifications, and was afterward spread and maintained by force, by the suppression of older teaching, and by the many means and artifices which are at the disposal of the ruling power."

By this series of calculated inventions and falsifications, he means none other than the Isidorian collection, as he openly avowed in the columns of the *Augsburg Allgemeine Zeitung*, under the signature "Janus.'

45. Prescinding from other dogmatic questions, we ask, is this imputation well

founded? Did the Isidorian decretals materially change the ecclesiastical polity in the ninth century? Did papal infallibility originate with them?

We answer negatively. As far as the power of the bishops is concerned, these decretals hold the common doctrine of the Church, namely, that it is of divine origin. With regard to the Roman pontiffs, nothing more is advanced than had been commonly believed, namely, that the primacy of jurisdiction over the entire Church was conferred upon the apostolic chair, in the person of Peter, directly by Christ himself; that the Roman chair had always preserved intact the divine traditions; that with it all other Churches must hold communion; that papal decrees are binding on all the faithful; that the more important questions should be referred to the Holy See. The right of appealing from the decision of bishops to the Holy See was also affirmed. (WALTER, Jus. Can. l. c. cap. ii. § 92. p. 165 seq.)

46. Now all these doctrines had been from the very beginning both taught and practically carried into effect in the Church.

The Isidorian decretals merely convey this universal teaching. How otherwise would they have been so generally received? While some of them therefore are spurious, others are genuine; and even those that are spurious only reflect the doctrine commonly believed at that period.

CHAPTER III.

Of the Roman Pontiff.

See Conc. Plen. Balt. II. tit. ii. cap. i. p. 34 : Kenrick, Dogm. vol. i. tract. ii. cap. vi. et xviii. : Natalis Alexander. Hist. Eccl. dissert. iv. in sec. i. schol. iii. : Conc. Vaticanum I. sess. iv. c. iii.

§ 9. PRIMACY.

47. Errors of Richer.—Having been created syndic of the theological faculty of the Sorbonne, he defended the thesis that the primacy of jurisdiction had been conferred by Christ directly upon the whole Church, that is, the body of the faithful, which delegates it to the Pope and the various other ministers; that therefore, as the soul makes use of the eyes and hands of the body to convey and execute its commands, so does the Church, which has received all power immediately from Christ, select the Pope, bishops, and priests to be the instruments of carrying out its laws.

48. This would evidently make the

ecclesiastical polity simply democratic or republican.

The Constitution of the United States declares that all power is inherent in the people, who agree or consent to choose certain officials to execute their sovereign will. The highest legislative body of the country consists of the Senate and House of Representatives, who are but the delegates of the people.

The President is the executive. He must see that the laws made by Congress are faithfully carried out; but he cannot originate a law himself. This system Richer would apply to the Church. So applied it is essentially Protestant, not Catholic. Sectarians of all shades call or banish their ministers at will, and hold that there is no difference between the clergy and the laity.

Richer retracted his heresy in the presence of Cardinal Richelieu, apparently with perfect sincerity, and died in 1631. (Apud TARQ. Jus. Publ. p. 100.)

49. The Catholic Church holds that the primacy is the power of ruling over the entire Church. The end for which it

was instituted was, that a head being constituted, all occasion of schism might be cut off. The primacy is the corner-stone of ecclesiastical unity. Now this is twofold: unity of faith, and unity of external communion. The latter is necessary to preserve the former.

Hence the primacy relates directly and primarily to the ecclesiastical polity; secondarily and but indirectly to matters of faith.

50. It is, moreover, a doctrine of divine revelation that the primacy is conferred directly and immediately on the Pope as the successor of St. Peter; that it is by divine appointment inseparably united with the See of Rome. (See SOGLIA, vol. i. lib. ii. cap. i. § 16, p. 178.)

This primacy of jurisdiction, it has been contended, is but extraordinary, that is, to be exercised only when bishops neglect their duties; or also, that it is but mediate, that is, to be exercised, not by the Pope himself, but merely through the bishops.

This opinion is refuted by Natalis Alexander, dissert. iv., in sec. i., where he says:

"'The Roman pontiff has supreme authority over the entire Church, which power is ordinary, that is, capable of being exercised not merely to supply the negligence of prelates, but constantly, and over all the faithful as well as over the prelates of the whole church, because he is the pastor of pastors."

51. In other words, the Pope has the same jurisdiction over all the dioceses in general, as bishops over theirs in particular. This is expressed by the late Vatican Council, Constit. Dogmat. sess. iv. cap. iii., as follows:

"Wherefore we teach and declare that the Roman Church, under divine Providence, possesses a headship of ordinary' power over all other Churches, and that this power of jurisdiction of the Roman pontiff, which is truly episcopal, is immediate, toward which the pastors and the faithful of whatever rite and dignity, whether singly or all together, are bound by the duty of hierarchical subordination and of true obedience, not only in all things which appertain to faith and morals, but likewise in those things which concern the discipline and government of the Church, spread throughout the world, so that being united with the Roman pontiff, both in communion and in profession of the same faith, the Church of Christ may be one fold, under one chief shepherd. This is the doctrine of Catholic truth, from which no one can depart, without loss of faith and salvation."

52. Dollinger says of this passage:

"The wording is so carefully arranged that no other position and authority remains for the bishops than that of papal commissaries or delegates. And in this manner, as every one acquainted with Church history and with the fathers will confess, the episcopacy of the early Church is essentially dissolved, and an apostolical institution, to which according to the judgment of the fathers the highest importance and authority is due, is subtilized to a bodiless shadow.

"For no one will think it possible that there should exist two bishops in the same diocese, one of whom is at the same time Pope, the other being simply a bishop, and a papal vicar or diocesan commissary is not a bishop, is no successor of the apostles; he may, through the powers conceded to him from Rome, be very mighty so long as his principal allows him to rule, just in the same way as a Jesuit or mendicant friar to whom the Pope has granted abundance of privileges, possesses great power." (Declar. March 28, 1871, transl. of N. Y. Herald.)

53. Dollinger here asserts:

1. That papal infallibility makes bishops but papal vicars, or representatives, holding entirely from the Pope.

2. That to assert that the Pope has the same ordinary jurisdiction over the entire Church which each bishop has over his diocese involves repugnance.

Now neither of these imputations is correct. Bishops indeed possess ordinary

jurisdiction, but they hold it subordinately to that of the Pope. Nor does the second supposition involve any repugnance, as the same thing exists in all courts of judicature, where various judges of different benches exercise ordinary jurisdiction over the same district or persons. Dollinger himself, in his "History of the Church," § 33, on the primacy, asserts that the Pope is the pastor, not merely of the faithful throughout the world, but also of the bishops themselves.

§ 10. INFALLIBILITY AND GALLICANISM.

54. The doctrine of the late Vatican Council is couched in the following words:

"We teach and define it to be a doctrine divinely revealed, that when the Roman pontiff speaks ex cathedra, that is, when in the exercise of his office of pastor and teacher of all Christians, and in virtue of his supreme apostolical authority, he defines that a doctrine of faith and morals is to be held by the universal Church, he possesses through the divine assistance promised to him in the blessed Peter, that infallibility with which the divine Redeemer willed His Church to be endowed, in defining a doctrine of faith or morals; and therefore that such definitions of the Roman pontiff are irreformable of themselves, and not by force of the consent of the Church thereto." (Sess. iv. c. iv.)

From this we infer:

1. Infallibility does not mean impeccability.

2. The Pope is infallible only in his official capacity, and with regard to faith and morals. Hence scientific researches or political questions do not come directly within the reach of infallibility; nor are the private opinions of a pontiff, even when written or printed, and treating of faith and morals, comprised in the definition. Benedict XIV., for instance, wrote many treatises bearing on faith and morals, even as Pope; yet no one attributes inerrancy to any of them.

3. Papal definitions "ex cathedra" are irreformable; that is, obtain full force of law of themselves, and not because the Church consents to, or receives them.

55. The latter is evidently directed against, and is the contradictory of, one of the famous propositions of the Gallican Declaration issued in 1682; the fourth proposition of which is as follows:

"That although the Pope has the principal voice in matters of faith, and that his decrees reach all the Churches and each Church in particular, yet his deci-

sions are not irrevocable—'nec tamen irreformabile esse judicium'—unless confirmed by the consent of the Church." (Ap. DARRAS, vol. iv. p. 365.)

56. From the primacy emanates the authority of erecting bishoprics. An episcopal see is generally located in one of the principal cities, from which the diocese itself takes its name. This perhaps is owing to the fact that formerly bishoprics were instituted in all larger cities. Thus, the episcopal see erected at Newark is termed the Diocese of Newark; nor would it be correct to say "Diocese of New Jersey," although its jurisdiction extends over the entire State.

By virtue of the primacy, the Pope is the chief pastor of all the faithful. To him therefore belongs the power of appointing bishops, as being pastors subordinate to him.

The translation of a bishop from one see to another can take place only by his authority. Innocent III., cap. ii. De Translat. Episc., speaks thus:

"As the spiritual bond is stronger than the carnal, there can be no doubt that Almighty God has

reserved to his authority alone, the dissolution of the spiritual matrimony that exists between a bishop and his church."

The Roman pontiff is the interpreter of the divine will. In like manner, the Pope only can depose bishops, and assign them coadjutors.

57. The temporal power of the Pope is in the present condition of affairs necessary to the free exercise of his spiritual authority, which requires a constant and free intercourse with all the faithful spread throughout the world, as the Vatican Council has declared. This teaching is fully concurred in by the Fathers of Baltimore:

"Although the temporal power of the Roman pontiffs, or the patrimony of Peter, was not imparted by God in the beginning, and does not pertain to the essence of the primacy, it seems nevertheless most useful, and in the present state of affairs, to a certain extent, necessary, in order that the pontiff may independently exercise for the welfare of the Church the rights of his primacy. For the Catholic Church, founded and instituted by Christ for the eternal happiness of men, obtained by virtue of her divine institution the form of a perfect society, and therefore should enjoy that liberty which will enable her to

perform her office, without being subject to any civil power." (C. Plen. Balt. II. tit. ii. c. i.)

To this declaration, the Fathers add the following practical injunction:

"Wherefore we enjoin, that in all the churches of these States, wherever they may exist, annual collections shall be taken up on the Sunday within the Octave of St. Peter and St. Paul, or at some other time more convenient in the judgment of the ordinary of the diocese, to be announced by the pastor on the previous Sunday." (L. c. C. Balt.)

The Fathers also express in the fullest and most explicit manner their entire devotedness to the Holy See.

58. Infallibility had not yet been defined. Hence no explicit mention is made of it by the American prelates. But their sincere profession of absolute submission to the Holy See, leaves not the slightest shadow of doubt that they would unreservedly have accepted and promulgated it had it been defined. When therefore some of these prelates afterward in the Vatican Council seemed to oppose this prerogative, it was evidently not because they ever doubted the doctrine itself, but rather because they lived in the midst of those

who would but too glady seize the slightest pretext of representing Catholics as disloyal citizens, owing allegiance to a foreign prince, and because to Americans anything like absolutism is repugnant, so that this doctrine might unfavorably predispose against, and repel from the Church many who otherwise would be its generous advocates.

59. It is perhaps to be lamented that in the Vatican Council greater moderation was not displayed during the theological discussions preceding the definition itself. Yet in the Council of Trent far more feeling was manifested on matters of less importance. Theologians, as is well known, are plain at times in handling their opponents, yet this cannot be said to be incompatible with perfect liberty of speech, as Dollinger thus objects:

"In the whole history of the Church, I only know of one general council in which, as in this last (Vatican Council), those in power prevented any thorough discussion of the tradition, and this was in the Second of Ephesus, in the year 449: there, in the so-called Synod of Thieves, this was done by force and by tumultuous tyranny. In the Vatican Council, the order of proceeding imposed on the assembly, the

papal committee and the will of the majority suffered no regular and critical examination to be made. . . . If you notwithstanding assert that the Vatican Assembly was entirely free, you take the word 'free' in a sense which theological circles do not generally attach to it. A council is only then theologically free, when free examination and discussion of all objections and difficulties has taken place. . . . That not even the most modest beginning was made in this direction; that indeed the immense majority of the bishops from Latin countries wanted either the will or the power to distinguish truth from falsehood, right from wrong, is proved by the pamphlets which appeared in Italy." (Declaration, March 28, 1871.)

It seems strange that so great an historian should thus define the freedom of a council. Were it necessary to accept Dollinger's meaning of the term "free," we should be compelled to deny the possibility of freedom of speech altogether. For then no assembly of men could be termed free, as a moral pressure will always be brought to bear on the adversaries of either party.

Assuredly, the prelates of the minority in the late Vatican Council had perfect liberty to express their views and vote accordingly. But there are certain limits to discussions. Unless these are observed, a council must end in a farce. Now, none

but such parliamentary restraints or rules were imposed on the Fathers of the Vatican Council. Were they, in consequence, deprived of freedom of speech?

§ II. HIERARCHY OF THE CHURCH.

60. Ecclesiastical hierarchy consists of bishops, priests, and other ministers. The authority of the Church itself is divine, and in no sense does it depend upon the civil power. It is entirely independent and absolutely supreme.

The Fathers thus speak of the teaching body:

"Bishops, therefore, being the successors of the apostles, whom the Holy Ghost placed to rule the Church of God, which he hath purchased by his own blood, when, being in communion with their head—that is, the Roman Pontiff, the successor of Peter and Christ's Vicar on earth—they unanimously define a doctrine, whether gathered together in a general council, or dispersed throughout the world—then, in such a case, they are endowed with the gift of inerrancy in such a manner that as a body they can never fall away from the faith, or define anything contrary to the doctrine revealed by God." (C. Plen. Balt. II. tit. ii. p. 40.)

This profession of faith does not ex-

clude the belief in papal infallibility as set forth by the Vatican Council. It rather includes it, in admitting that the Pope is the chief seat and organ of inerrancy.

It can truly be said that infallibility resides in the Roman pontiff solely; and also in the College of Bishops, when united with him; so that, theoretically speaking, a definition is infallible in two ways: first, as emanating from the Roman pontiff alone, without the consent of the bishops; secondly, as proceeding from the bishops, consenting with and adhering to the Pope.

61. We may here insert the words of Archbishop Kenrick:

"We do not, however," he says, "approve of that mode of speaking whereby the Pope is said to be infallible of himself (*se solo*); for of him as a private doctor, scarcely any Catholic theologian is known to have advocated the prerogative of inerrancy. Nor is he alone as Pontiff; for when he is teaching, the College of Bishops always adheres to him, as ecclesiastical history testifies. Pontifical definitions, therefore, when accepted by the College of Bishops, whether in council or in their sees, whether subscribing to the decrees, or simply not objecting to them, have infallible force and authority, which no Catholic can deny." (KENRICK, Dogm. vol. i. tract. ii. De Eccl. cap. xviii.)

§ 12. CONFERENCES.

62. The Fathers of Baltimore thus earnestly recommend theological conferences:

"Theological conferences will go far to supply the rarer celebration of diocesan synods. They will preserve in the minds of all a knowledge of sacred science; promote a sound and uniform practice for the direction of souls; dispel mental laziness; and give a ready occasion of eliminating abuses.

"It is therefore our wish, that in cities, where priests can easily assemble, such conferences should be held four times a year; either on the Mondays of the week preceding the ember days, or at any other convenient time to be designated by the ordinary. In rural districts, twice a year will be sufficient. All priests having charge of souls, whether secular or regular, should be present at them." (C. Plen. Balt. II. n. 68. p. 52.)

The utility of these reunions of the clergy can scarcely be over-estimated. We venture to say, however, that they will be productive of greater good when the clergy are left free to select and arrange the various matters pertaining to such conferences. Too much episcopal interference would but render the entire affair odious, and irritate the minds of the clergy.

63. The paramount importance of these meetings is thus stated by the Third Council of Cincinnati:

"The establishment of theological conferences was earnestly recommended. Such reunions of the clergy, besides promoting that fraternal feeling which is so sweet a bond of Christian and clerical union, strongly tend to encourage the study of sacred things, to elicit zeal for the salvation of souls, and to establish uniformity of practice in minor rites and observances."

In like manner, Pope Pius IX., Encycl., March 17, 1856, thus addresses the bishops:

"Lest, however, priests . . . should neglect their studies, . . . we most ardently desire, that as far as possible, you should establish in your dioceses theological conferences." (Ap. C. Plen. Balt. II. l. c.)

64. That they may be profitable, and not degenerate into a mere waste of time, order and method must prevail in them. At Rome, where separate conferences on moral theology and rubrics were held monthly at the Appallinaris and Monte Citorio, in the Convent of the Lazarists, one of the younger theologians was appointed at each preceding meeting, or by the special committee, to work out and carefully prepare in writing one of the theses which are issued in pamphlet form for the entire year.

After the reading of the thesis, objections were in order. We have not unfrequently had the pleasure of listening to the learned yet eminently practical difficulties proposed by such men as Fathers Perrone, Franzelin, etc.

The theoretical and speculative opinions of the younger clergy were often modified by the practical knowledge of men grown gray in the professor's chair as well as in the pulpit; in the confessional no less than in deep study.

In these reunions were brought together the scientific training of the younger students and the riper judgment of the more venerable theologians; one was compared with the other; and both were thus trimmed and set right.

Such is the beneficial result of these meetings.

CHAPTER IV.

Of the Councillors of the Bishops.

See Council Balt. tit. cap. v. p. 53 seq.: Walter, Kirchenrecht, lib. iii. c. i. § 138, p. 276: Soglia, tom. ii. lib. i. c. iii. p. 37.

§ 13. ORIGIN OF CANONS.—RIGHTS OF CHAPTERS.

65. The Fathers of the Second Plenary Council of Baltimore thus speak:

"As bishops, especially in these States, are so burdened with labors, that of themselves alone they can scarcely comply with all their duties, they should select priests . . . who will assist them by their wise counsels. In this manner the second sacerdotal order will give assistance to the first, and by the common consent and suffrage of all, the unity of administration will be rendered firm, and everything will be done gently, yet not without constancy, for the greater glory of God." (L. c. p. 53. n. 70.)

From the earliest ages, bishops were wont to consult the more venerable among their clergy in the administration of their dioceses.

In the fifth century, St. Augustine gave them a rule, as they lived in the episcopal residence, and constituted, as it were, the bishop's senate. In 760, Chrodogang, Bishop of Metz, laid down directions for their guidance, which remained in force till the twelfth century. Thus far, they lived in community. But when gradually they had acquired greater wealth, they preferred living in their own houses, meeting, however, at stated times for consultation.

The place of meeting was called "chapter;" a word probably taken from the rule of St. Benedict, who applies the term to the room where the brothers meet in order to read "a chapter" of their rule. This seems also to have given rise to the appellation of "cathedral chapter," which signifies the entire number of canons attached to the cathedral church.

For the same reason the canons themselves were termed "capitulars." They are now commonly styled "canons," perhaps because their names were written on a public list; or, also, because they lived according to a rule or canon.

66. A "chapter" is an ecclesiastical corporation, and as such meets apart, without being convoked or presided over by the bishop. It also transacts its business independently of him; makes its own laws, and in every respect acts like any other corporate body, as far as regards its own internal affairs.

When the episcopal see becomes vacant, full powers of administration devolve upon it "jure communi," not merely by privilege. This holds good whether the vacancy is occasioned by the death of the incumbent or by translation to another see; whether by ecclesiastical deposition or voluntary renunciation, or even when the bishop is violently expelled by the civil government, in a manner that leaves but little hope of an early return.

In a word, the "chapter" obtains complete administration of the diocese within certain prescribed limits, whenever the see becomes permanently vacant.

67. By violent expulsion is meant that the bishop should either be led away captive or forcibly driven from his see by foreign invaders, and detained by them in

such a manner that but little probability remains of his ever being restored to his flock. In such a condition only is the spiritual bond between the bishop and his church considered broken, and the see consequently vacant.

Should however the ordinary be banished by the civil authority of his own diocese, the spiritual relationship would not thereby be severed, such a state being deemed but temporary. This case has of late but too frequently occurred in Italy and other European countries. Bishops were ejected from their sees, either because they were obnoxious to the Government or unwilling to accede to its unjust demands. Under these circumstances the exiled prelate remains in possession of ordinary or original jurisdiction; his vicar general in the meanwhile taking his place, as he is unable personally to administer the diocese. (See WALTER, l. c. p. 282.)

68. The vicar general constitutes one and the same moral person with the bishop, and holds from him. When therefore his jurisdiction ceases, that of the vicar general also lapses. In all instances, therefore,

where the power of the bishop expires, as by death, renunciation, deposition, translation, or permanent captivity in a foreign land, the jurisdiction of the vicar general "ipso facto" becomes extinct.

While he possesses some privileges in virtue of the common law, he nevertheless acquires them solely by the appointment of the bishop. The same, by reasons of analogy, it seems to us, applies to rural deans and others, upon whom the bishop may have conferred any special jurisdiction. It lapses with that of the bishop.

The chapter cannot administer the diocese collectively, but is bound by canon law to appoint a vicegerent or vicar within eight days after the vacancy of the see takes place. Should it neglect doing so, this duty will devolve on the metropolitan. The one thus selected is termed the capitular vicar. He governs the diocese in the name of the entire chapter. (Conc. Trid. sess. xxiv. De Ref. cap. xvi.)

69. A candidate for the vacant see, or one who has been proposed or nominated, cannot become the administrator or

capitular vicar. The reason is, that he is obliged to give a strict account of his administration to the incoming bishop. Now it would be futile as well as void of all meaning that the administrator should render an account to himself. Direct deviations from this rule have, however, recently occurred in this country.

Finally, it may be observed that during the vacancy nothing should be changed or innovated—"nihil innovetur."

§ 14. ADMINISTRATION OF A DIOCESE, SEDE VACANTE, IN THE UNITED STATES.

70. It may be asked upon whom devolves the administration of a vacant diocese in this country. There being no chapter or canons, it cannot pass to them; nor can it go to the vicar general, whose jurisdiction ceases with that of the bishop.

The Fathers of Baltimore say:

"Each bishop can communicate the faculties he has received from the Holy See to worthy priests that have labored in the diocese; especially should he do so at the approach of death, so that during the vacancy of the see there will be some one to take the place of the departed bishop, until the Apostolic See,

having been duly informed at the earliest convenience, should provide for the diocese in some other way." (Conc. Plen. Balt. II. no. 96. p. 67.)

71. This passage implies two things: First, that the bishop has during life the power of communicating the faculties received by him from the Holy See, to estimable priests of his diocese, in such a manner that their faculties will continue after his death. Secondly, that the bishop, when in danger of death, may appoint a priest who will act as administrator "pro tempore" after his demise, until the Holy See shall, upon receiving due notice, make other arrangements.

As such powers enabling a bishop to appoint a temporary administrator, are altogether extraordinary, not comprised in the provisions of ordinary ecclesiastical jurisprudence, we confess that we are at a loss how to account for them. Suffice it simply to say that they seem to have been given our bishops by the Holy See, as would appear from a note appended to the decree just cited.

As the text of the faculties granted by the Propaganda is not subjoined, we cannot

of course further expatiate on the matter. Nor can we show any parallel case in the common law of the Church.

We suppose, however, that our situation in this country is of an exceptional character. We have no corporate body of the clergy, upon which by common law jurisdiction devolves, "sede vacante." We are, moreover, at no short distance from the Holy See, which consequently is incapable of designating an administrator as soon as the see becomes vacant. Hence arises the necessity of a regulation by which the diocese will be governed until the Apostolic See shall have received proper information and made permanent arrangements.

72. Again the Fathers of Baltimore say:

"But if at the demise of the archbishop or bishop, there is no priest to whom the aforesaid faculties were properly communicated; or also should the see become vacant in any other manner than by the death of its prelate, then the metropolitan, or, in his default of taking the matter in hand, as also when the metropolitan see itself becomes vacant, the senior suffragan bishop, will designate some worthy priest who will administer the diocese, using the faculties contained in the first formula, until the Holy See, on receiving the necessary intelligence of the fact, shall dispose

otherwise." (Ex Brevi Pii IX. 13 Jan., 1854, apud C. Balt. p. 68.)

From all this we see:

1. That any bishop, either during life or at the point of death, may delegate certain faculties to deserving priests, that will remain in force after his death; he may also appoint a priest to administer the diocese "ad interim" after his demise.

2. Should this have been omitted, the metropolitan is empowered to make the appointment.

3. In default of any action on the part of the metropolitan, this duty devolves on the senior bishop of the province. The same rule holds when the archiepiscopal see itself is vacant.

4. When a see becomes vacant in any other manner than by the death of its incumbent, the appointment of an administrator "ad interim," devolves on the metropolitan, or, in his default, on the senior suffragan bishop.

5. In all these instances the appointment is but a temporary one; the Holy See reserving the right of either confirming or altering it, and making permanent provisions.

6. In all cases information must be sent to the Holy See at once.

§ 15. BISHOP'S COUNCIL IN AMERICA.

73. Thus far we have spoken of the bishop's senate, explaining the prescriptions of the common law of the Church, as well as of ordinary ecclesiastical jurisprudence. In European countries these rules are, with but few exceptions, still in force.

In our country, the council is substituted for the chapter; the councillor for the canon. The Second Plenary Council of Baltimore reenacts the decree of the First Plenary Council of Baltimore, which reads thus:

"The fathers deemed it advisable to exhort bishops to select in their dioceses, wherever it is possible, priests of mature age, conspicuous for learning, integrity, and administrative ability, whom they should constitute councillors, and whose advice they should, when opportunities present themselves, ask in the administration of the diocese. The custom, moreover, existing in some dioceses, of calling them together once every month, on a determinate day, in order to discuss diocesan matters of importance, is recommended as being praiseworthy." (No. 71. p. 54.)

This decree then advises:

1. That an episcopal council should be formed, consisting of the learned and experienced priests of the diocese.

2. That the bishop should consult them on affairs relating to the government of the diocese.

3. That they should be called together once a month on a stated day.

74. Nothing, it seems to us, could be more opportune than these recommendations. Apparently, also, they have been carried into effect. Most of our bishops, if not all of them, have their council. Yet we venture to ask, does it exist generally also in reality, or merely in name? Are its members formally consulted or called together at stated times?

If these conditions were complied with, would it not come to be true what the Fathers of Baltimore say, namely:

"That greater harmony would be brought about in the administration of the diocese; that things would be done more moderately, yet at the same time more firmly, for the greater glory of God and the salvation of souls." (P. 54.)

A council, however, it is needless to say,

does not possess the rights of a canonically established chapter. It has no jurisdiction, nor does the administration of the diocese, "sede vacante," devolve upon it, as it is not a corporate body recognized by the common law of the Church, although it approaches perhaps as nearly as circumstances in this country will allow, to the spirit as well as the letter of ecclesiastical jurisprudence.

§ 16. VICAR GENERAL, AND OTHER OFFICIALS.

75. The other officers of the episcopal curia are the vicar general, chancellor, notary, and secretary.

The functions and privileges of the vicar general are thus described by Kenrick:

"In most matters that relate to acts of jurisdiction, the vicar general is placed on a like footing with the bishop, whose vicegerent he is, so that they constitute but one and the same tribunal. The collation of more extensive faculties, however, is dependent on the will of the bishop; as there are some that require a special mandate. The vicar general can grant faculties to priests together with the care of souls, as he may also revoke them for equitable reasons; he has the power of dispensing with the publication of the

banns of matrimony; of imposing censures, and giving approbation for hearing confessions. He cannot, however, take cognizance of the graver criminal causes, nor collate clerics to benefices, though he may appoint such as are presented by the patron; he cannot convoke a synod, or visit the diocese; nor can he absolve from cases reserved by law solely to the bishop; he has no power of dispensing with an oath or a vow, nor with the diocesan statutes; nor can he give letters dimissory, unless the bishop should be away from his diocese for a considerable time. He has original jurisdiction in the exercise of the ordinary faculties, and he may also communicate them to others without any special delegation of the bishop. But for the exercise of extraordinary faculties, he needs a particular mandate or commission." (KENRICK, Mor. vol. i. tract. viii. § vi. p. 230.)

76. As appears impliedly in this passage, the vicar general possesses by virtue of the ecclesiastical law all the ordinary faculties of the bishop. Now, besides the ordinary powers, the latter holds also such as are extraordinary. Such is, for instance, that of dispensing with the impediments of marriage. They are general laws binding on the entire Church. Now, no bishop can, "jure ordinario," enact any but particular laws for his own diocese, or dispense with them. The faculty, therefore, of dispensing

with impediments, requires a special mandate from the Pope. It is consequently an extraordinary power not vested in the episcopal office.

To exercise this authority, the vicar general stands in need of a special commission. As, in America, bishops are authorized by the Holy See to confer even extraordinary faculties on one or more priests of their dioceses, the vicar general may of course be invested with them.

77. The bishop may constitute two or more vicars general, assigning to each a separate district. He may also restrict their jurisdiction, communicating to them but a portion of his faculties. He may, moreover, at any time revoke his mandate, and appoint others to that dignity; nor is he obliged to give any reason for thus acting. The chancellor and secretary write the acts and documents of the ordinary. The notary attests their authenticity.

The Fathers of Baltimore say:

"The vicar general represents morally the person of the bishop . . . he cannot, however, do anything except by episcopal delegation." (N. 72. p. 54.)

This, we own, is difficult of understanding. Kenrick explicitly maintains that the vicar general has original jurisdiction in the exercise of the ordinary faculties; the Fathers of Baltimore assert that he can do nothing except by delegation of the bishop. Do we perhaps misunderstand the passage? or is the status of the vicar general in this country different from that which is laid down in ecclesiastical jurisprudence? Does the vicar general in America receive none but delegated faculties, as would any other priest to whom the bishop should communicate them? And should this fact have escaped the attention of Archbishop Kenrick, who makes no distinction between the status of a vicar general in America and in Europe?

When the Fathers of Baltimore, therefore, say that the vicar general can do nothing except by episcopal delegation, they can evidently speak of the episcopal appointment only, which designates the incumbent of the office of vicar general. This commission, delegation, or rather appointment, is of course necessary to any exercise of that office. In this sense we take the

words of the Fathers of Baltimore. For when once appointed, the vicar general no longer acts by delegated, but by original jurisdiction, save with regard to the exercise of extraordinary faculties.

CHAPTER V.

Of Ecclesiastical Persons.—Archbishops.

See Second Plen. C. Balt. tit. iii. cap. i. n. 78 seq. p. 59: Kenrick, Mor. vol. 2. p. 356.

78. THE term "metropolitan" is derived from the Greek Μητροπολις, which signifies "the mother city." It was applied by the Romans to the principal city of a conquered district, usually called a province. The metropolitan or archbishop, therefore, is the chief bishop of a province.

§ 17. JURISDICTION OF THE METROPOLITAN.

79. The jurisdiction of the metropolitan was generally determined and circumscribed by the civil division of the province, and was commensurate to its territorial extent. By the more modern ecclesiastical discipline his authority has been restrained within narrower limits.

1. He may denounce, by letters to the Holy See, a comprovincial bishop not residing in his see, or being absent from it beyond the time allotted by the canons.

2. Every third year he may convoke a provincial council.

3. In cases designated by the law, he may supply the negligence of suffragan bishops.

4. He also receives appeals from the sentence of his suffragan bishops.

5. He may have the archiepiscopal cross, the emblem of jurisdiction, carried before him all over the province, as well as bless the people, and wear the pallium.

All these privileges are summed up by jurisprudents, when they teach that jurisdiction devolves on the archbishop on appellation, during visitation, and by devolution.

80. When an accused person, believing himself unjustly or illegally sentenced by the bishop, applies to the metropolitan for a revision of sentence, and redress consequent on a mistaken judgment, this is termed "appellation."

An appeal lies to the archbishop from

all censures imposed by the bishop, except from such as are inflicted "ex informata conscientia," that is, without any judicial proceedings, owing to the delicate nature of the offence. It is necessary, however, that the bishop should have authentic and perfectly reliable data upon which to base his decisions. Hence the phrase "ex informata conscientia," that is, "from a well-informed conscience," or, in other words, "from correct information."

The metropolitan, secondly, has jurisdiction over the province during the visitation. Formerly he was authorized at all times to visit the entire province and examine into its condition. Now, this right is no longer an ordinary one, and cannot be exercised except at the command of the supreme pontiff, or by mandate of the provincial council. (Kenr. Mor. ii. p. 356.)

Again, when the suffragan or his chapter neglect to do their duty, it becomes the right of the metropolitan to take the case in hand. Thus it is the metropolitan's duty to designate a capitular vicar, should the chapter omit doing so eight days after the death of the bishop.

CHAPTER VI.

Of Bishops.

See C. Plen. Balt. II. tit. iii. c. ii. p. 62 : Walter, Jus Can. p. 272 : Zallwein, Jus Eccl. Publ. § 363 : Soglia, vol. ii. p. 20 . Benedict XIV. De Synod, Dioc. l. v. c. vii. : Lingard's Hist. and Ant. of Anglo-Sax. Church, vol. i. chap. ii. p. 89 seq.

81. SOME ecclesiastical jurists have argued that bishops, being the successors of the apostles, inherit all their prerogatives. Others, however, more properly distinguish these prerogatives into those of the apostolate itself, those of the priesthood, and those of the episcopacy, and maintain that the privileges of the priesthood and episcopacy only pass to the episcopal college.

§ 18. JURISDICTION OF BISHOPS.

82. The privileges of the apostolate in the strict sense of the term, were personal, being attached to the apostles as individuals ; and hence they were incapable of

being transmitted. Such was the right of preaching throughout the whole world; as well as of giving the sacraments and exercising jurisdiction, without any limit of place or country. Bishops do not succeed to the apostles as individuals, as, for instance, to Paul or John or Andrew, but rather as composing a body corporate or collegiate. (SOGL. vol. i. p. 266.)

We turn next to the prerogatives of the episcopate and priesthood. They comprise two things: the power of order, and the power of jurisdiction over a particular portion of the faithful. Now, bishops succeed to the entire power of order; they do not, however, inherit the fulness of jurisdiction possessed by the apostles, being placed by the Holy Ghost to rule "particular" Churches. The power of episcopacy includes the authority of commanding, judging, punishing, dispensing, and administering. The first relates to the office of preaching, watching over the schools, seminaries, ceremonies; also the residence of the clergy, and visitation of the diocese.

Again, the bishop can make regulations either in or out of synod. Laws enacted

in synod are of themselves permanent, yet not immutable, the successor having the right to abrogate them. (SOGL. vol. i. p. 287. lib. ii. c. ii.)

83. Laws made out of synod are also deemed by some jurists perpetual; by the greater number, however, but temporary.

The bishop may prescribe prayers to be said either before or after mass; not, however, during mass itself.

§ 19. ORIGIN OF EPISCOPAL JURISDICTION.

84. It may further be asked whether bishops hold jurisdiction immediately of the Pope, and but mediately of God, or vice versa. Zallwein (Jus Eccl. Publ. § 363) distinguishes as follows:

(*a*) Remotely, all ecclesiastical as well as civil authority comes directly from God.

(*b*) Again, the power of order appertaining to bishops and priests is received immediately from God.

(*c*) The sovereign pontiff holds jurisdiction immediately of God; for the cardinal electors do not confer upon him any power, as they themselves are not

possessed of it; nor can any person bestow what is not in his possession. They merely designate the person of the future pontiff.

(*d*) As the bishop communicates to priests a portion of his faculties, so neither is it repugnant that the Pope should impart a share of the plenitude of his power to bishops. Hence the opinion of those who maintain that bishops hold immediately of the Pope does not seem to involve any contradiction. (ZALLW. l. c.)

85. But it may not altogether unreasonably be objected, what St. Paul said to the ancients of the Church of Ephesus, in his noble and truly apostolical farewell at Miletus:

> "Take heed to yourselves and to all the flock over which the Holy Ghost hath placed you bishops to rule the church of God, which he hath purchased with his own blood." (Acts xx. 28.)

The Holy Ghost, it will be remarked, and not the Pope, is said to place the bishops over the Church of God.

Yet we venture to say that the opinion advanced by us, in no sense conflicts with the sacred text.

When a prince grants a manor to Peter, with the condition that he should give a portion of it to Paul, we should in that case say that Peter holds immediately of the prince, Paul but mediately. Would it be on that account less true that Paul received it at the hands of the prince?

The same reasoning applies evidently to our case.

86. Again, as Walter (p. 272) observes, jurisdiction was bestowed by the Holy Ghost, not directly upon each bishop, but upon the episcopal college, or body of bishops. Now, the Roman pontiff is the head of this body corporate: as life and activity always stream downward from the head into the body, so may episcopal jurisdiction be said to be derived by bishops from the Pope. Yet we must carefully guard against an erroneous opinion which would make bishops but the vicars of the Pope. They possess original, not merely delegated authority.

Whatever opinion we may choose to follow, it is certain that bishops are not independent princes of the Church; that

their power is subordinate to that of the Pope. (TARQ. p. 94.)

The Fathers of Baltimore succinctly touch upon the points hitherto set forth.

87. They pass to another subject.

"According to the Council of Trent (sess. xxiv. De Ref. c. 5), the graver criminal causes against bishops are reserved to the Holy See. The minor causes, however, are examined and determined upon by the provincial council only, or by such as are deputed by it. (C. Plen. Balt. II. n. 87. p. 65.)

In former times, even the most grievous charges against bishops fell under the jurisdiction of the metropolitan or patriarch.

§ 20. TITULUS MISSIONIS, AND THE OATH: PRIESTS CANNOT ENTER A RELIGIOUS ORDER WITHOUT THE PERMISSION OF THE ORDINARY.

88. The Fathers also promulgate some excellent decrees of several previous provincial councils of Baltimore. The first is as follows:

"As heretofore, by virtue of apostolical indult, secular clerics were usually ordained in this country 'titulo missionis,' we admonish bishops not to promote any to

sacred orders, except such as are capable of serving on the missions . . . having previously taken an oath of perpetually devoting themselves to the mission which may be assigned them." (N. 89. p. 65. See KENR. Mor. i. p. 224.)

The oath here prescribed is still obligatory, as the Holy See did not accede to the petition of the Fathers of Baltimore of dispensing with it for the future, as we shall see further on when speaking of orders. Every cleric therefore must take this oath before being ordained subdeacon. The faculty of ordaining "titulo missionis" will also be discussed later on.

89. Another decree reenacted, reads thus:

"The Fathers have thought it opportune to supplicate the Holy See to issue a declaration for the United States of North America, enjoining that ecclesiastics in sacred orders, and ordained titulo missionis, as well as all other priests belonging to these dioceses, cannot enter a religious institute without the written permission of the ordinary." (N. 93. p. 67.)

In a note subjoined at the bottom of page 67, we read:

"In a letter of his Eminence the Prefect of the Propaganda to the Archbishop of Baltimore, written on the 23d of October, 1852, among other things,

this also occurs: 'It is known that not unfrequently, priests serving on missions will embrace a religious state, whence results no slight detriment to religion, arising from the want of priests. It should not be overlooked that in the Sixth Council of Baltimore, ample provision was made with regard to priests desirous of entering into a religious community, namely, that they should obtain the permission of their ordinary. As this decree was approved with the rest, it should be carefully observed.'"

It is therefore evident that in America no priest can join a religious community without the consent of the bishop.

90. But should this be understood as leaving it absolutely in the hands of the bishop to grant or refuse permission? We do not think so.

According to the common law of the Church, any secular priest may become a religious, even when the ordinary is opposed to it, except when the interests of religion demand otherwise. Should it be detrimental to souls, no priest could do so, even in Europe, without the permission of the bishop. (See Note I. in Appendix.)

In this sense, we think the decree of the Fathers of Baltimore, as well as the rescript of the Propaganda, must be inter-

preted. This is also indicated in the letter referred to. (See Bened. XIV. Bullar. tom. 2. p. 156.)

§ 21. SALARY AND PERQUISITES OF PASTORS AND ASSISTANTS.

91. Again, on p. 67, n. 94, we read:

"Lest a lust of filthy lucre should infect the sacerdotal order, or dissensions arise among priests living together on account of the alms freely offered by the faithful in the administration of baptism and marriage, we admonish bishops to establish in their next synod, or otherwise, with the advice of their priests, an equitable way of distributing these offerings among the priests residing in the same house, also taking into consideration the chief claim as well as the graver duties of the pastor." (C. Plen. Balt. l. c.)

In conformity with this injunction, we find in the statutes of the Diocese of Newark, the following rule laid down:

"In regard to the moneys proceeding from the administration of the sacraments (baptism and marriage), we enjoin that they shall be equally divided between the pastor and his assistants, and that all shall equally bear the expenses of the house." (Statuta, cap. iii. § 9.)

92. The general practice in this diocese accordingly is, that, the expenses of the

household having been defrayed, the balance of the perquisites is equally distributed among the officiating clergymen.

If in some parishes the surplus is not thus apportioned it will be simply a violation of the statutes, and more or less unjust as well as sinful. Nor would it be justifiable to apply the surplusage to the church or the poor of the congregation. The officiating priests are entitled to it, and they alone can dispose of it.

But it may be asked, what is to be done when the perquisites do not suffice to defray the household expenditures? Should the deficiency be filled up from the treasury of the church, or from the salary of the pastor and his assistants?

In some parishes, if we are correctly informed, a deduction is made for that purpose from the salary of each officiating priest. This practice would also seem to be in harmony with the letter of the statute itself, which enacts that those expenses must be borne equally by the pastor and assistants.

93. Yet this interpretation presents difficulties which are neither few nor easy of

solution. Would it not, in fact, create rather an odious, if not unjust discrimination among the assistants of the various parishes, some receiving their salary with the surplus of perquisites, while others would be obliged to give up part even of their salary?

Again, may not the same difficulties be extended to pastors themselves, whose perquisites are insufficient to support the house?

With regard to the salary, the Fathers of Baltimore again inculcate on the bishops and faithful the following decree of former councils:

"Lest priests should be obliged to beg, or suffer want, to the disgrace of their sacred dignity, we admonish bishops to exhort the faithful to furnish a becoming livelihood to such as labor in word and doctrine." (N. 90. p. 66.)

The statutes of the Diocese of Newark fix the salary of each pastor at one thousand dollars per annum; that of the assistants at six hundred dollars each. (Stat. c. iii. § 8. p. 37.) No extra collection is allowed them for their support, except

when the income of the church is insufficient to make up the salary.

The same statutes direct that a pastor absent from his flock on account of ill-health, is entitled to half of his salary.

§ 22. CATHEDRATICUM.

94. "The cathedraticum is a determinate pension annually to be given to the bishop for his support, and as a mark of honor and submission to the cathedral church, as being the mother church." (SOGL. vol. ii. p. 20.)

It is usually paid at the synod. But formerly, it was not unfrequently given during the episcopal visitation. This was forbidden by the Council of Trent. (Sess. xxiv. c. iii. De Ref.) That council, however, did not abolish it altogether, as some have maintained, or prohibit its discharge outside the visitation, as is plainly shown by Benedict XIV. (De Synod. Dioc. l. v. c. vii.)

95. The amount to be given by each church should be such as will not be burdensome or oppressive. (C. Trid. l. c.)

Benedict XIV. speaks thus:

"We do not deny that bishops could have com-

mitted, or that they did actually commit excesses against justice as well as equity or other virtues, by demanding more than was allowed by law, or by exacting it too punctiliously from poor ecclesiastics, thus manifesting too great a greed of money, not indeed without causing scandal thereby." (De Syn. Dioc. l. v. c. vi.)

In accordance with universal custom, the Fathers of Baltimore say:

"Finally, as it is but equitable and fair, that all the faithful of each diocese should contribute to the support of the bishop, who is charged with the care of all, the Fathers think, that this matter should be discussed in the diocesan synods, where the priests that have charge of souls, after mutual consultation, should determine on a fixed pension, to be given annually to the ordinary, and to be made up from a portion of the income of each church." (Conc. Plen. Balt. II. n. 100, p. 68.)

96. From all this we infer:

1. That the cathedraticum should be taken from the treasury of the church, not from the salary of the pastor or assistants.

2. That it should be moderate. We all know but too well how much our congregations are obliged to struggle in order to build up churches, and maintain parochial

schools. This consideration will certainly weigh with our ecclesiastical superiors.

3. The amount of cathedraticum, as well as the share falling to the different parishes, should be fixed by the priests themselves, assembled in synod; for, as the Fathers of Baltimore say:

"It is but meet that the bishop should ask the opinion of all his priests, as well as patiently listen to and diligently think over it; so that what is thus ratified by all, may obtain greater efficacy, and be more readily complied with." (N. 66. p. 51.)

§ 23. ELECTION OF BISHOPS.

97. The practice of the Church with regard to the election of bishops has not been always exempt from variation.

Thus, the Fathers of Baltimore say:

"The manner of designating such as were to be promoted to the episcopal dignity, was not at all times uniform. At present, the right of electing bishops is deservedly and for most excellent reasons reserved to the sovereign pontiff; this discipline has fortunately been in vogue already for several centuries." (C. Plen. Balt. II. n. 102. p. 69.)

The present uniformity in this matter was established by the Council of Trent.

98. Let us for a moment scan the history of the Church, to follow the different phases of this branch of her discipline.

In the primitive ages of Christianity, as St. Cyprian informs us, bishops were elected by the priests of a province, as well as by the people. The latter were not, strictly speaking, possessed of the elective franchise. They merely gave testimony of the integrity and sanctity of the candidate. See Nat. Alex. sec. i. diss. 8; St. Cyprian, ep. 68; Leo M. ad Rusticum. This great pontiff says:

"There is no reason why those should be considered bishops, who are neither chosen by the clergy nor acceptable to the people."

As a general rule, the patriarch or metropolitan confirmed the election. Then, the prerogatives of the primacy were not as explicitly defined as they are now. It is therefore not strange to find that bishops were not unfrequently confirmed without any knowledge on the part of the Holy See.

99. Coming down to the sixth century, we learn that temporal rulers began to intermeddle with these elections, and in

many instances succeeded so well as to make the privilege of electing the bishops in their dominions entirely dependent on their good will, nay, even inherent in the crown. In Spain this prerogative was bestowed upon the king by the bishops themselves in the seventh century. (See Conc. Tolet. xii. A. D. 681.) In England and Germany they had also exclusively arrogated to themselves this elective franchise. Nor was the prevalent system of "investiture" of slight significance in bringing about such a state of things. The bishop's ring and crozier were but symbols of his spiritual jurisdiction. With the latter, however, were not wholly disconnected temporal emoluments of the highest kind. These alone, it is true, could the king confer. Yet custom had made it obligatory that this earthly power should be transmitted to the candidate newly elect by investing him with the crozier and ring.

100. Men began, therefore, soon to look upon the latter as the condition of the former. Investiture thus became synonymous with election. The spiritual dignity was thus made a dependency of the

temporal power. Bishoprics were no longer conferred on such as were distinguished by virtue as well as learning, but on such as were servile instruments of despotic rulers.

Against this abuse, the great pontiff Gregory VII. raised his courageous voice. It was in consequence abolished in Germany, in 1213; in Spain, in 1208; in England, in 1215; and in France, in the year 1268. (See WALTER, Jus Can. p. 430 seq.)

The right of election was then restored to the chapters of cathedrals. Yet even they not unfrequently abused their power, which they nevertheless retained during the middle ages. They were, however, obliged to proceed to an election at least three months after the see had become vacant. The bishop elect could deliberate for one month whether he should accept the proffered dignity. And finally he was bound to request the pontifical confirmation within three months after the election. (WALTER, l. c. p. 434.)

101. Such was the prevailing discipline of the middle ages. We turn now to our own times. Owing to intestine disagreements among chapters, as well as external

dissensions between them and civil rulers, the right of election was conferred upon the latter in the fifteenth century by papal indults and concordats. Thus, up to a late period it was exercised by the kings of Portugal, Spain, France, Naples, Sicily, and Austria. Naturally enough, this concession was made to none but Catholic monarchs, lest it should become subject to abuse. In Prussia, therefore, as well as Hanover, Holland, and Switzerland, the cathedral chapters or the bishops of the province remained in possession of this prerogative.

102. Of late, this privilege has been almost universally revoked. Rulers assumed an attitude hostile to the Church. She was compelled in consequence to withdraw the trust she had placed in their hands. And election became once more the right of its original holders, the chapters. Monarchs, however, still retain a considerable influence upon the pontifical decision by their remonstrances with the Holy See. Such, we believe, is at present the established discipline of the European continent.

In Ireland, we are informed, the nomination of bishops is made by the parish priests of the respective dioceses, chapters not being as yet, in the full sense of the term, canonically organized.

103. In this country, as elsewhere, ecclesiastical discipline on this point has been subject to change. Up to the year 1833, when the Second Provincial Council of Baltimore was held, no less than five ways of designating incumbents for vacant sees had been made use of.

1st. Proprio motu; that is, some one, without authority or warrant, suggesting a candidate to the Holy See. In this way Bishops Concannen, Connolly, Conwell, and Kelly were appointed.

2d. The archbishop and his suffragans agreed upon a person for a bishopric situated in their province. Such was the presentation of Bishop David as coadjutor of Bardstown.

3d. Others had been appointed on the presentation of the bishop of the diocese, who desired a coadjutor, as in the case of Mgr. Blanc, for the See of New Orleans, and Mgr. Chabrat, for Kentucky.

4th. Some, again, had been presented by bishops of other dioceses, without any participation on the part of the metropolitan. Thus was Bishop Purcell appointed, at the instance of Bishop England; Bishop Kenrick had written in favor of Rev. John Hughes, and the Archbishop, Whitfield, in favor of Father Dubuisson.

5th. Lastly, for the first election in the United States, namely, that of Bishop Carroll, the Pope granted to the clergy the privilege of nominating the candidate, for that occasion only, reserving in future the nomination to the Propaganda. (See De Courcey and Shea, Cath. Ch. in U. S. p. 130.)

104. The Second Provincial Council of Baltimore, in its fourth decree, submitted to the Holy See the following mode of designating bishops:

1. When a see falls vacant, the suffrages of the other bishops of the province are to be taken, in order to determine on the priests who shall be proposed to the sovereign pontiff. This decree was approved by the Propaganda, by decree of March 18, 1834. (See Cath. Ch. l. c. p. 34.)

2. To this the Propaganda, in 1850, added another decree, enjoining that the archbishop of the province in which a new bishop is to be elected, shall send the names of the candidates proposed to all the other archbishops, who shall in turn transmit their opinions to the Holy See.

3. In 1859, another rescript of the Holy See ordained that in the election of an archbishop, all the metropolitans should be consulted, and cast their vote for candidates.

4. This was confirmed in 1861; and it was enjoined on each bishop every third year to send to the Propaganda and the metropolitan of the province the names of such priests as were deemed worthy of the episcopal dignity.

5. When a see becomes vacant, whether episcopal or metropolitan, all the prelates whose privilege it is to recommend to the sovereign pontiff ecclesiastics for the vacant see, should convene in special synod or meeting, in order to discuss the qualifications of the candidates that are proposed. (Conc. II. Pl. Balt. p. 73, n. 106.)

6. To all this, add that not unfrequently

the priests of the respective dioceses were consulted on their choice of a bishop. Thus we read, in the life of Archbishop Spalding:

"One of his last official acts as Bishop of Louisville, was to assemble his council, that the members, as representing the clergy of the diocese, might make known their wishes concerning the choice of his successor." (Life, p. 256.)

105. That the priests of the respective dioceses have, from the very beginning of Christianity to the present day, been recognized in the common law of the Church as the original and ordinary electors of bishops, we have shown in our brief historical review. It was wrenched from their hands and transferred to those of kings or bishops, only under extraordinary circumstances. When these circumstances had disappeared, this privilege returned to the clergy as to its proper owners. In their hands it now rests throughout the greater part of the European continent; chapters being but the representative bodies of the priests.

106. Nor would it seem less in accordance with the wish of the Holy See, that this right should be exercised by the priests in America. Thus, among other

instructions addressed by the Holy See to the Second Provincial Council of Baltimore, the following words occur:

"The Propaganda has stated that they will not object to grant America election as in Ireland." (Cath. Ch., DE COURCEY, p. 131.)

Now, if we are correctly informed, in Ireland priests elect or nominate bishops.

107. We shall now define our terms.

"The word election, in a general sense, applies to the presentation, nomination, and confirmation of bishops." (REIFF. tom. i. tit. vi. § 1.)

In a more restricted sense it is defined:

"A canonical vocation or appointment of a worthy person to a vacant see, by such as have the right of electing, which is to be confirmed by the Holy See." (REIFF. l. c.)

As will be seen from this definition, election is the act of legitimately designating or calling to a vacant see some candidate; while confirmation consists in the act of rendering valid, or ratifying, on the part of the Pope, by formal assent, the nomination made either by the chapter or the Propaganda.

108. Again, the term election is distinguished from that of nomination. Election

properly speaking takes place when the chapter casts a majority of votes for "one" of the candidates; while nomination consists in proposing two or more persons to the Pope, that he may select one of them for the vacant see.

The candidate elect of the chapter acquires a right to the see; candidates merely nominated do not.

When, therefore, one alone may be presented to the Holy See for confirmation, it would be "election," strictly speaking; when two or more must be proposed, we have "nomination;" nor does the Pope without grave reasons reject all the nominees.

109. There is still another special mode of election, which consists in the presentation of a candidate by way of supplication, or affording information of the qualifications of persons to be promoted. (REIFF. l. c.) This of course does not oblige the Pope to select any of the persons thus recommended. This seems to be the nature of the selection of candidates for vacant sees made by bishops in this country. In fact, the Propaganda has declared that

it does not impose upon the Holy See any obligation whatever of appointing any one of the proposed candidates. (Decr. of June 14, 1834.) And again, the Propaganda at a later date explains more distinctly the character of the nominations made by the American prelates. It teaches explicitly that the commendation of persons can only be considered as affording information concerning the character of the persons proposed. (See Conc. Plen. Balt. II. p. 72.) It is, in other words, similar to what ecclesiastical jurisprudents term "simplex petitio."

The nomination itself is made by the Propaganda, as appears from the rescript in the election of Bishop Carroll.

110. This would seem to be an additional argument in favor of allowing the clergy a share in this counsel-giving nomination. Who, as a general rule, know better the faults or the virtues and other good qualifications of priests considered worthy of promotion, than their fellow-priests?

Besides, it would always remain the privilege of the bishops of the province to accept or reject the choice of the clergy.

111. In reference to this subject it gives us pleasure to quote the following words from the Life of Archbishop Spalding:

"Archbishop Spalding was, as I infer from his correspondence on this subject, in favor of still further modifying this system (of episcopal election by the bishops only), so as, in some way, to give the second order of the clergy a voice in the presentation of candidates for episcopal office. He would have given the diocesan councillors the right to present a list of names to be sent to Rome with that of the bishops. He thought that the episcopal council in this country should be looked upon as a quasi-chapter, and that the giving them a vote would bring us nearer the general discipline of the Church in this matter. Indeed, he was in favor of introducing the canonical chapter as an element in our Church polity whenever this could be done. The Plenary Council does not seem, however, to have entered upon the discussion of this subject." (Life, etc. p. 312.)

112. We sum up as follows:

1. In no case does election by chapter or otherwise confer anything but "jus ad rem." The Pope, as pastor of the entire Church, alone has the right of constituting the inferior pastors.

2. The nomination of episcopal candidates, as made by the priests of the vacant diocese, whether represented in the chap-

ter or otherwise, has generally been the normal and regular mode of election.

3. Temporal rulers at times obtained this privilege.

4. In this country the presentation of candidates does not canonically constitute nomination, but must be regarded rather as a means of informing the Holy See as to worthy persons.

5. In the opinion of eminent men, and also according to the instructions of the Holy See, it would be desirable, as well as conformable to the general discipline of the Church, that the second order of the hierarchy, that is, the priests, should have a voice in the election of bishops.

113. We subjoin the following from Lingard's History, etc.:

"The election of bishops has frequently been the subject of controversy between the civil and ecclesiastical authorities. As long as the professors of the gospel formed a proscribed but increasing party in the heart of the Roman Empire, each private church observed without interruption the method established by its founder. But after the conversion of Constantine, when riches and influence were generally attached to the episcopal dignity, the emperors began to view with jealousy the freedom of canonical election; they assumed the right of nominating to the

vacant sees, and the clergy deemed it expedient to submit to a less, rather than to provoke by resistance a more dangerous evil." (LING. Hist. and Antiq. of the Anglo-Saxon Church, vol. i. p. 92.)

114. That in many parts of England the right of election was exercised by the clergy, Lingard shows as follows:

"In Northumbria, it appears that the right of canonical election was recognized in the clergy of each Church." (LING. Antiq. of the Anglo-Saxon Ch. vol. i. p. 92.)

Again: Alcuin, being prevented by absence from taking part in the election of an archbishop as the successor of Eanbald, who had died in 796, testifies:

"That up to that day, the clergy of York had exercised the right of election, pure from the stain of simony, and free from external control." (Ib. p. 92.)

Of interference in episcopal elections on the part of the rulers, Lingard tell us:

"That the kings (of England) learned to look upon bishoprics as benefices, of which the disposal belonged to themselves; that by Canute and his successors the practice of investiture with ring and crozier seems to have been introduced. From that period, he says, the mitre frequently became the reward of intrigue and influence." (Antiq. vol. i. p. 94.)

115. Of the temporal influence of the

bishops of England, we read: In addition to the rank and rights which the bishop held in the Church, be also derived high authority and important privileges from the State. He was by office one of the chief advisers of the king, was summoned to the national councils . . . in some respects the archbishop enjoyed privileges in common with the monarch. . . . He presided in the chief courts of justice within his diocese. (LING. ib. 100 seq.)

CHAPTER VII.

Of Priests having the Care of Souls.

See Conc. II. Plen. Balt. tit. iii. cap. iv. p. 75 seq.: Kenrick, Mor. vol. ii. tract. xii. p. 29 seq.: Walter Kirchenrecht, lib. vi. § 252: Soglia, vol. ii. § 101: Benedict XIV. cum illud 1742: Conc. Trid. sess. xxiv. De Ref. c. xvii.

116. The Fathers of Baltimore say:

"As formerly and very appropriately, in the words of the Council of Trent, dioceses and parishes were distinct, and to each flock special pastors as well as inferior rectors were assigned, so that each one should have charge of his particular congregation, it would therefore be very desirable, that in accordance with this custom of the entire Church there should be parish priests in the proper sense of the term in these States, as in other Catholic countries. Yet our circumstances are such as will not at the present conjuncture admit of this. It is, however, the sincere desire of the Fathers of this Plenary Council, that gradually and as far as circumstances will permit, our discipline should in this respect conform to that of the entire Church." (No. 123, p. 79.)

This legislation breathes breadth of view

and enlightened wisdom. Before entering more fully into this question, we shall premise a brief historical review.

§ 24. HISTORY OF PAROCHIAL RIGHTS.

117. Up to the third century there was but one bishop or rector of each church, and but one church in each city. Thither all the faithful of that district went to hear mass. As churches became more numerous, consequent on the increase of Catholics, priests were placed over them, to whom were also assigned particular districts. Some jurists trace this discipline back to the third century (WALTER, p. 290); others make it begin in the fourth. (SOGL. § 23. p. 44.) There are those who even go back to our Lord, and assert the divine origin of parish priests, making them the successors of the seventy-two disciples of Christ. In cities where several priests were attached to a church, they usually formed themselves into a body corporate, and led a life in community.

118. In the ninth century, a peculiar abuse became prevalent. Monasteries, as

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well as secular priests having charge of the principal parishes, contrived to obtain control of other smaller churches, in such a manner as to receive their rich income, without, however, actually ministering to their spiritual wants. They hired vicars or substitutes who did the work for them, and to whom they paid but an inconsiderable pittance. Not unfrequently they employed such priests as would serve at the lowest rate, without having the slightest regard to their capacity or virtue. (WALT. l. c. p. 291.)

119. The result may easily be imagined. Hirelings and thieves were placed over the flock which Christ had purchased by his blood. The words of our Saviour were fulfilled:

"All they who came are thieves and robbers, and the sheep heard them not." (John x. 8.)

Again:

"The thief cometh not, but to steal, and to kill and to destroy." (Ib. v. 10.) "But the hireling, and he that is not the shepherd, whose own sheep they are not, seeth the wolf coming, and leaveth the sheep and flieth: and the wolf snatcheth and scattereth the sheep, and the hireling flieth because he is a hireling: and he hath no care for the sheep." (John x. 12. 14.)

Vigorous measures were adopted against this abuse by Pope Urban II. in 1095; as also by the Synod of Mayence in 1225, which thus speaks in its twelfth canon:

"An exceedingly unlawful custom has prevailed in some parts of Germany, contrary to all ecclesiastical law, namely, that hired priests are placed over churches in the capacity of temporary substitutes. This custom we most severely prohibit. If, however, it is necessary that a substitute be employed, his charge shall be made permanent."

120. The Council of Trent (sess. vii. cap. ii. vii.) abolished the evil by enjoining that "no one, of whatsoever dignity, etc., shall presume to accept and to hold at the same time several churches;" that moreover the cure of souls shall be conferred on persons who can reside on the spot, and exercise personally the said cure (l. c. ch. iii.); that if a vicar be necessary he shall be perpetual. (Ch. vii.)

§ 25. IMMOVABILITY OF PARISH PRIESTS.

121. The law of the immovableness of priests having the care of souls, was enacted, as we have just seen, in order to put

an end to the corrupt practice of hiring temporary substitutes.

This right of parish priests is thus set forth by the Fathers of Trent:

The Holy Synod enjoins on bishops, that for the greater security of the salvation of the souls committed to their charge, having divided the people into fixed and proper parishes, they shall assign to each parish its own perpetual "and peculiar parish priest, who may know his own parishioners." (Sess. xxiv. c. 13. De Ref.) The council moreover ordains that "the people should be divided into fixed and proper parishes." (Ib.)

122. In accord with this is the legislation of the Fathers of Baltimore:

"We wish," they say, "therefore, that throughout all these provinces, especially in the larger cities, where there are several churches, determinate districts on the model of parishes with accurately defined limits, be assigned to each church; and that to its rector parochial or quasi-parochial rights be given." (N. 124.)

With regard to the rights of immovability, the Fathers of Baltimore speak thus:

"While employing the terms parochial rights, parish priests, parish, we by no means intend that to the rector of any church the right of immovableness should

be given. We admonish bishops, however, not to use their privilege of removing priests except for grave reasons. (Ib. 125.)

123. We quote with pleasure the views of Archbishop Spalding, as given in his excellent biography:

"While I would favor the gradual creation of parish priests, beginning with the large cities, and legislating in that direction also for country districts, according to the plan of my venerable predecessor, I should with him still maintain their movability "ad judicium episcopi;" and I should deem it premature and probably disastrous in its consequences to adopt 'at once' the full parochial system, for which we are scarcely prepared." (Life, p. 312.)

124. As will be seen, Archbishop Spalding was in favor of gradually adopting the universal discipline of the Church in this matter, as laid down by the Council of Trent; and deprecated but its sudden and full introduction. This view of the matter, it would seem, was taken by the Fathers of Baltimore, and should apparently commend itself to an impartial mind.

But we would rather call attention to another point in the following paragraph.

We may be permitted here to note the confidence which Archbishop Spalding

placed in his priests, as also the frankness and cordiality with which he treated them.*

"It gave him (Spalding) real pleasure, too, to entertain his priests, and he was never better pleased than when surrounded by them. His soul was in the work which they were doing, and their presence gave him an opportunity of talking of that of which his breast was full. His government was wholly free from anything like espionage. He would have been as unfit for this as he was incapable of it." (Life, p. 270.)

* It has been said that some bishops of this country were not altogether frank or open in their dealings with their clergy; that hospitality seemed to be no part of their household; that pastors were removed on complaints advanced by the offscouring of a parish; that when charges were brought against a priest, bishops adopted a system of espionage to discover the truth of the allegations made against them, not even informing the accused of these imputations, and then either removing or suspending the priest without having given him any opportunity of self-defence.

That such a government must be the source of grave injustice to priests, as well as subversive of all ecclesiastical authority, no one, we think, will deny.

That such a state of things exists, we do not assert; that it may, however, occur, will be seen from the life of the saintly prince-priest Demetrius A. Gallitzin, who thought that it was scarcely necessary for him to be vicar general of the diocese, when so learned and excellent a prelate as Bishop Kenrick would take counsel of a hotel-keeper, and suspend a clergyman on the charges of that person.

Another trait in Archbishop Spalding's character, not less worthy of notice, was his fair and practical way of treating accusations made against priests. His biographer thus describes it.

When a charge worthy of notice was made against a priest, Archbishop Spalding never failed to make it known to him; not that he believed him guilty, but that he might give him an opportunity of freeing himself from an unjust suspicion. When the proof of guilt was too strong to admit of doubt, he was firm in the course which, "after a thorough investigation of the case," he thought proper to pursue — above all, when there was danger to souls.

"I did not," he wrote to a clergyman, "attach any importance to the charges made against you, of whom, from all that I knew, I had a good opinion. Still, I thought it due to yourself that you should be informed of them. Your explanation is satisfactory, and I bid you God speed in your labor, which you should continue for the glory of God." (P. 270.)

§ 26. MANNER OF APPOINTING PARISH PRIESTS.—EXAMINATIONS.

125. The Fathers of Baltimore ordain that no priest shall be appointed to any

parish without having successfully made an examination before the bishop and two priests selected by him for that purpose. They say:

"In order to follow out the intention of the Church, commanding that no one shall be promoted to a parochial charge except on having undergone a successful examination before the bishop, and three examiners appointed in synod, we accordingly direct that no one shall be placed over a congregation without having previously made an examination before the bishop and two priests to be designated by him. Nor shall any one be admitted to such an examination who has not for the space of five years served on missions in the diocese in which the parish is situated. But if a priest who has not labored for five years on missions in the diocese should, nevertheless, receive charge of a parish church, he shall be considered but the administrator of the parish; nor shall he obtain the name as well as rights of a parish priest until the five years have elapsed, and he shall have made the aforesaid examination." (Conc. Balt. Plen. II. n. 126. p. 79, 80.)

126. This decree contains three things:

1st. All clergymen must stand a special examination before being capable of receiving charge of a parish.

2d. They must have labored during five years on missions in the diocese, as a con-

dition of being admitted to the examination.

3d. If chosen to preside over congregations before that term has expired, they shall be considered but administrators of the parish, and at the end of the above time shall be examined as already stated.

These regulations commend themselves to all who have the interest of the clergy as well as of the laity at heart. To such among the priesthood as are conspicuous for learning as well as virtue, they will, if properly put in execution, secure a fitting position; for aspirants to holy orders, they will serve as a salutary stimulus in the pursuit of their studies. And in priests laboring on the mission they are no less calculated to keep up a love of study by holding out to them an equitable recompense. They establish a fixed mode of appointing pastors, thus cutting off wire-pulling on the part of the clergy, as well as unfair discrimination in the superior.

No doubt, therefore, the bishops who made this law will exert themselves strenuously to have it put into practice.

127. The Fathers of the Council of

Trent are also quite as explicit in this matter. Their words are significative of the importance they attached to this examination. They say:

"It is highly expedient, for the salvation of souls, that they be governed by worthy and competent parish priests. To the end that this may with greater ease and effect be accomplished, the Holy Synod ordains that when a vacancy occurs in a parish church, wherein the bishop has been accustomed to assign the cure of souls to one or more (priests), 'all' of whom, as this synod ordains, must be subjected to the examination herein prescribed later." . . . (Sess. xxiv. cap. xviii. De Ref.)

128. The council then enacts that the bishops shall within ten days, by public notice or otherwise, summon those who may wish to be examined. The manner of examining is thus set forth:

"When the time appointed has transpired, all those whose names have been entered shall be examined by the bishop, or, if he be hindered, by his vicar general and by the other examiners, who shall not be fewer than three; to whose votes, if they should be equal or given to distinct individuals, the bishop or his vicar general may add his in favor of whomsoever he shall think most fit. The examiners shall swear on the Holy Gospels of God, that they will, setting aside every human affection, faithfully perform their duty. . . .

And to none other but to one of those who have been examined as aforesaid, and have been approved of by the examiners according to the rule prescribed above, shall the church be committed." (Ib.)

129. This decree may be summed up thus: No one can receive a parochial cure without having been examined by the bishop, and three examiners appointed in the diocesan synod. All may apply for examination. The result shall be determined by the votes of the examiners, who act under oath. Whomsoever they have judged fit by age, morals, learning, prudence, and other suitable qualifications to govern the vacant church, he shall be appointed thereto.

His claim becomes such, that, if set aside, he has the right of appealing to the Holy See, as Benedict XIV. shows. (De Synod. Dioc. lib. xiii. cap ix. n. 18 seq.)

130. We believe that in some dioceses of this country the custom of examining semi-annually the junior members of the clergy, who have not yet been ordained five years, has been introduced. It has been said, moreover, that some bishops intended to substitute this for the parochial exami-

nations prescribed by the Fathers of Baltimore. Though we may be far from condemning semi-annual examinations of the younger priests, and though perhaps unable to ascertain correctly the motives of our superiors, yet to us it seems that this was hardly meant by the Fathers of Baltimore. For they state explicitly that the parochial examination can be made only by such as have already labored five years on the mission: moreover, they say that if any one should be placed over a congregation before such time has elapsed, he shall be considered but the administrator of the parish; and only at the end of the term specified can he be admitted to the above examination.

131. Another reason of no less moment seems to favor our view. The examination ordained by the Council of Baltimore must involve two things: on the part of the bishop, an obligation of conferring the parish on him who is found most worthy and competent; on the part of the latter, a claim in justice as well as equity to the appointment.

Any other supposition would be simply

ridiculous; yet the semi-annual examinations alluded to above would imply neither; consequently we must hold them to be distinct from those that are prescribed by the Fathers of Baltimore, as well as alien from those of the Council of Trent.

§ 27. OF ECCLESIASTICAL BENEFICES.

132. An ecclesiastical benefice is defined a perpetual right of receiving certain revenues from the proceeds of ecclesiastical property, on account of the spiritual office attached to them, including the sanction of the Church. (SOGL. vol. ii. c. ii. p. 146; KENR. vol. ii. Mor. tract. xii. vii. p. 29.) The chief element of a benefice, however, is not the temporal perquisite, but the spiritual duty or office which is annexed to it. A more proper definition, therefore, would be as follows:

"A benefice is the right of performing a spiritual function ordained by the authority of the Church, to which the privilege of receiving a determinate compensation is perpetually attached." (SOGL. l. c. ib.)

Hence these three things are necessary to constitute a benefice:

1st. The perpetual right of receiving an income.

2dly. The spiritual office.

3dly. The ecclesiastical authority.

133. With regard to the first, the following conditions are necessary:

1st. The salary must be fixed, and derived from immovable chattels, as a general rule. Yet the Holy See has declared that the pension given by the French Government to pastors partakes to a certain extent of the character of a benefice.

2d. It must be perpetual as regards the incumbent. His right is for life, unless previously forfeited in cases laid down by the common law.

The second constitutive part of a benefice is the spiritual function. As applied to a parochial benefice, it consists in the care of souls, the administration of the sacraments, preaching, and various other parochial duties.

Finally, the authority of the Church is essential. A parish, therefore, not holding from the bishop or not recognized as a parish by him, or acting in violation of the law of the Church, is in no sense an ecclesiastical benefice.

134. Benefices, moreover, are divided into such as include the exercise of jurisdiction—as parishes, for instance—and into such as impose but a spiritual office or duty void of jurisdiction, as is the recitation of the breviary.

Parishes partaking of a benefice can be forfeited only for the following crimes:

1. Heresy.
2. Confidential simony.
3. Violently striking a cardinal bishop.
4. Assassination.
5. Procuring abortion.
6. Duel.

Besides, sacrilege, adultery, fornication, perjury, and other notorious crimes can be punished with privation of benefice.

135. The right of immovability of parish priests is founded on the permanency of the ecclesiastical revenues of a benefice. Yet the latter need not essentially consist of immovable chattels, though the common law of the Church thus prescribes.

Popes, as we have seen, have declared pensions furnished by governments to partake of the nature of ecclesiastical benefices. It would consequently seem that

the modern discipline of the Church admits of greater latitude in this matter. All that would appear to be necessary, is that the support of the parish priest should be such as to guarantee a perpetual livelihood, irrespective of the sources whence it is derived. Now, few men will deny that, as a general rule, our parishes in America can give a permanent living. There is no reason, then, why the incumbent or pastor may not in like manner become immovable, as far as the sustenance is concerned. At least we see no valid argument that can be urged on this head against the immovability of parish priests in this country.

We do not, however, say that other reasons of a different kind may not concur in making it desirable that this should be done gradually, according to the views entertained by Archbishop Spalding.

§ 28. PATRONAGE (JUS PATRONATUS).

136. Patronage is defined—the right or power of presentation to a church or ecclesiastical benefice that is vacant. (REIFF. lib. iii. tit. xxxviii. § 1. p. 559. vol.

iii.) This privilege is acquired only by such as have either founded—that is, given the ground for building—or endowed a church, with the consent of the ordinary. (SOGL. l. c.) We say "right of presentation," as the patron does not really confer a benefice. He simply presents an ecclesiastic to the bishop, whose duty it is to examine the candidate thus presented. If he finds him to be fit for the office or parish, he should give it to him; should he be found unfit, he should be rejected.

Patronage, then, does not include the right of appointing the pastor, or retaining him against the will of the ordinary. Hence we see how entirely uncatholic was the action of the trustees of St. Mary's Church, Philadelphia, and of St. Louis', Buffalo, who, holding the title of the church, claimed the right of choosing their pastor, or of refusing to accept such pastors as were sent by the bishop. (See the Catholic Church in U. S., DE COURCEY, pp. 225 and 490.)

137. Add to this, that, as Kenrick says:

"If a church is built by collections taken up among a number of people, the right of patronage belongs to none of them, whether taken singly or collectively.

Hence the right of patronage does not at all exist in the United States." (KENR. Mor. vol. ii. p. 31. tract xii. cap. vii.)

On the difficulties of St. Louis' Church, Buffalo, we quote the following from De Courcey and Shea's History of the Catholic Church:

"Only one difficulty troubled the administration of Bishop Timon, and this arose in the Church of St. Louis. The ground for the church had been deeded to Bishop Dubois, at the time of his visit to Buffalo in 1829, by Louis Le Couteulx, Esq. Gradually the church had been erected, and a body of trustees organized under the general law of the State. To them the administration of the church was transferred, the bishop having full confidence in their integrity as men, and fidelity as Catholics. This hope, however, was delusive; ere long they began to usurp powers not their own; and on the issuing of the pastoral letter of the Rt. Rev. Bishop Hughes, after the Diocesan Synod in 1842, the trustees of St. Louis' Church peremptorily refused to submit to the regulations contained in it.

"These regulations required every church to act under its pastor subject to the ultimate decision of the ordinary in the appointment of teachers, sexton, organists, choir, and other persons employed in the house of God. It also subjected the expenditure of the church funds to the supervision of the pastor and bishop, and required the accounts to be open to their inspection." (P. 490.)

CHAPTER VIII.

Life and Propriety of Conduct of Clerics.

See Conc. Plen. Balt. II. tit. iii. c. vi. p. 93 seq.: Conc. Trid. sess. xxii. ch. i. on Ref.: Walter, Jus Can. l. v. § 209, 210: Soglia, Jus Eccl. vol. i. l. iii. § 58, and vol. ii. l. i. c. viii. § 71.

§ 29. ECCLESIASTICAL DRESS: OBLIGATION OF WEARING CASSOCK IN THIS COUNTRY.

138. "THEREFORE we desire that they (clerics) should observe the law of the Church, wearing the cassock at home as well as in church, as being the distinctive dress of ecclesiastics." (Conc. Plen. Balt. II. n. 148. p. 94.)

139. The incessant persecutions of the first ages rendered any distinction of attire impossible.

As early as the fourth and fifth century, however, when peace had been restored to the Church, she sought to distinguish ecclesiastics from laymen by their outward apparel. It was not, however, prior to the sixth century that uniformity was reached

in this matter. The form of the clerical habit was probably taken from that of the monks. At present it consists chiefly of the cassock reaching to the ground; its use is prescribed by positive ecclesiastical law as well as by custom.

In Catholic countries this attire is used at all times and in all places; whether in the house or outdoors; at home or abroad. A transgression of this custom is punishable with privation of ecclesiastical immunities.

140. In America this law does not bind in so unlimited a manner. Living among non-catholics, clergymen would be constantly exposed to ridicule and annoyance, should they appear in public places vested in cassock. Yet nothing hinders them from doing so in the house or in church.

This, in fact, is made obligatory on all clerics, as we saw, by the Fathers of Baltimore. Nor do we think that their prescriptions on this point can be set aside continually without betraying contempt, more or less sinful, for a grave ordinance of the Church.

141. As regards the ecclesiastical attire in general, we fear that in this country we are drifting in a direction not altogether in harmony either with the spirit or the letter of ecclesiastical law. We have met priests who sought relaxation from their arduous duties on sea-shores, or in fashionable watering-places, dressed in every other conceivable way but that of priests. It may not be out of place, therefore, to quote the words of the Council of Trent:

"There is nothing," say the Fathers of Trent, "that continually instructs others unto piety and the service of God more than the life and example of those who have dedicated themselves to the divine ministry. For as they are seen to be raised to a higher position above the things of this world, others fix their eyes upon them as upon a mirror, and derive from them what they are to imitate. Wherefore clerics called to have the Lord for their portion, ought by all means so to regulate their whole life and conversation as that in their dress, comportment, gait, discourse, and all things else, nothing appear but what is grave, regulated, and replete with religiousness; avoiding even light faults, which in them would be most grievous; that so their actions may impress all with veneration." (Sess. xxii. ch. i. on Ref.)

§ 30. ECCLESIASTICAL IMMUNITIES.

142. The Fathers of Baltimore touch upon another point worthy of notice.

"Ecclesiastics," they say, "should not rashly apply to profane tribunals, either in relation to business or law-suits. Whenever any difficulty arises even with a layman, and in regard to temporal affairs, they should not implead any one, or voluntarily appear in court when impleaded themselves, unless the matter cannot be otherwise arranged. Any one, however, who should institute a suit before a civil judge against a clergyman or religious person, on all matters appertaining to the ecclesiastical court, thereby despises the honor of the Church, and violates the sacred canons." (No. 155, p. 96.)

143. The rigor of this law of the Church has been somewhat mitigated. At present the canons forbid:

1. That one ecclesiastic should implead another ecclesiastic. Hence an ecclesiastic does not incur the censures for suing a layman.

2. The matter in dispute must be of a strictly ecclesiastical nature.

3. The impleading must be rash, that is, without being necessitated by any sufficient reason.

Accordingly, cases may occur when one ecclesiastic could implead another ecclesiastic, even in ecclesiastical matters to a certain extent, without incurring the censures.

144. On this matter we shall speak more fully hereafter. At present a few words will suffice to explain the nature of the exemption of clergymen from lay jurisdiction.

Bellarmin says:

"Ecclesiastics are not exempted from the civil law, as far as this is consistent with the sacred canons. For," as he observes, "they are also citizens. However, they cannot be punished even for civil offences by a lay judge." (BELLARM. De Cleric. lib. i. c. 28.)

This exemption is called "privilegium fori."

"Natalis Alexander (Hist. Eccl. sec. xv. cap. vii.) contends that this privilege, as applied to civil cases, is not of divine right: other authors, however, maintain the contrary. Practically speaking, the Church claims that all causes of ecclesiastics, whether civil or ecclesiastical, pertain to her tribunal. Clergymen, however, may appear in a secular court when they must implead a lay person, or are themselves impleaded by him." (KENR. Mor. vol. ii. p. 347.)

145. An ecclesiastic who is cited before a lay-tribunal as a witness in a civil or

criminal cause, cannot appear without having previously obtained in writing permission from his bishop or superior to do so.

146. The next privilege is termed "privilegium canonis," so named from the 15th canon of the Second Council of the Lateran, which runs thus:

> "If any one by diabolical instigation, . . . should lay violent hands on an ecclesiastic, let him be excommunicated."

The violence here mentioned includes, besides striking, any other injurious external action, provided it be serious, such as gravely insulting language.

From this censure all those are exempted,

1. Who are invincibly ignorant of the law and the censure annexed to it.

2. Those who act in self-defence.

3. Those who strike in a jocular manner.

4. Those who inflict such an injury on the sudden impulse of anger, without any premeditation.

By ecclesiastics are here meant all those who have received the tonsure. This privilege extends also to monks and nuns.

147. The Fathers of Baltimore finish this chapter by earnestly admonishing clerics

to flee idleness; to devote themselves to the study of theology, canon law, liturgy, and ecclesiastical literature. To this excellent monition, we venture to add but one suggestion, namely: that the distribution of parishes and ecclesiastical positions be of such a nature as will of itself be the most potent incentive to study.

CHAPTER IX.

On Ecclesiastical Seminaries.

See Conc. Plen. Balt. II. tit. iii. ch. vii. p. 105 seq.: Aug. Theiner, Geschichte der Geistlichen Bildüngsanstalten, 1835: Walter, Jus Can. lib. v. c. i. De Educat. Cleric. § 196: Conc. Trid. sess. xxiii. c. 18. De Ref.; Soglia, lib. ii. c. ii. § 130.

§ 31. HISTORY OF ECCLESIASTICAL SEMINARIES.

148. From the very beginning of Christianity, bishops were solicitous about the training of ecclesiastics for the sacred ministry. No fixed and permanent mode could be adopted in this matter during the first centuries of bloody persecution.

However, as soon as peace was restored to the Church, bishops set apart special houses, generally contiguous to their own, where such as aspired to the priesthood were brought up and prepared for the altar. Thus do we read, in Socrates' Hist. lib. i. c. ii.:

"Alexander, Bishop of Alexandria, ordains that

boys should be educated for the Church: out of their midst, he selected Athanasius, who, having become of age, was also ordained deacon by him."

Moreover, all monasteries contained schools of learning; and monks made it their chief task to prepare youths for the Church. Where episcopal seminaries were wanting, their place was supplied by the schools of these monasteries.

149. It was customary also that priests should themselves instruct others, thus preparing for themselves fit and worthy successors. Hence the following decree:

"Resolved that all priests, who are placed over parishes, should, according to the custom prevailing throughout Italy, . . . as good fathers, teach the junior students to read the Psalms, to attend to spiritual exercises and to the study of the law of the Lord, so as to provide worthy successors for themselves. (See Conc. Vassion. II. A. D. 529.)

Yet all these aspirants to the priesthood were obliged to spend some time preceding ordination, under the immediate supervision of the bishop.

150. When, in the sixth century, chapters came into existence, the instruction of these young men devolved upon them,

and a more uniform mode of training was established.

Regular seminaries were now instituted; and their direction confided to these chapters. In them, a special office was created, that of theologian, or professor of theology, whose duty it was to superintend the studies of these seminaries.

151. This continued to the end of the twelfth century, when abuses of a serious nature became prevalent, and caused seminaries to fall into decay. The office of theologian, or the professorship, which seems to have been a lucrative position, was frequently left vacant by chapters, and its rich income divided among the rest of the canons.

Universities, in the principal European cities, became the centres of learning; they became the schools of training young men even for the ecclesiastical state. They were endowed in the most liberal manner by kings and bishops. From them issued the greatest literary men of the middle ages—a Scotus, St. Thomas Aquinas, St. Bonaventure, Albert the Great, and a host of others.

These again, in turn, occupied the principal chairs and professorships in those seats of learning.

152. But in their turn, the universities also degenerated. Learning became synonymous with pedantry; immorality appeared there in its worst forms.

Hence the Sacred Council of Trent, during its sessions in 1563, rightly judging that ecclesiastics could no longer be educated with safety in universities, reestablished the old episcopal seminaries, placing them under the direct supervision of bishops, and laying down restrictions against the recurrence of former abuses.

153. The first seminary of this period, was established by St. Ignatius Loyola, for the Germans at Rome, in 1552. It continues to flourish even at the present day, under the excellent fathers of the Society of Jesus. When this Society was abolished, seminaries became extinct in many parts of Germany. Ecclesiastical students were thus compelled to frequent universities, where chairs of theology and philosophy existed. This is at present, to a great extent, the condition of affairs in Germany.

Bishops, however, possess in these universities a certain right of superintending theological studies, and preventing errors from being taught.

154. Nor does it seem, on the other hand, altogether incongruous that the civil authority should also have some part in the arrangement of the plan of studies, and in the general superintendence, provided this does not conflict with the laws of the Church.

However, candidates for the priesthood are obliged to remain some time in the episcopal seminary before ordination.

§ 32. INTERNAL ADMINISTRATION OF SEMINARIES: PUBLIC EXAMINATION.—PROVINCIAL SEMINARIES PREFERABLE TO DIOCESAN SEMINARIES IN THE UNITED STATES.

155. As regards the internal administration of seminaries, the Council of Trent enacts:

1. That all cathedral churches should support and train up in the ecclesiastical sciences a certain number of candidates in colleges to be erected near such churches.

2. None should be received under the age of twelve years.

3. The children of the poor should be chiefly selected: those of the rich, however, should not be excluded, provided they consent to defray their expenses.

4. All churches, without exception, shall contribute to the support of these seminaries.

"The bishop," say the Fathers of Trent, "shall take a certain part or portion out of the entire fruits . . . of all dignities whatsoever, . . . abbeys, priories, of whatsoever order, even though regular, . . . and of all benefices whatsoever, even those belonging to regulars, . . . even those of other colleges;—in which, however, there are not actually seminaries of scholars or of teachers for promoting the common good of the Church; for the Synod wills that those places be exempted, except in regard of such revenues as may remain over and above the suitable support of the said seminaries." (Sess. xxiii. c. 18.)

All parochial churches in this country, therefore, whether in charge of secular or regular priests, should contribute to the support of seminaries. Only such colleges and institutions do not fall under this obligation as themselves actually train up young men for the priesthood. Priests,

therefore, of a religious order having charge of parishes, but not educating clerical students, are not exempted from this duty of supporting seminaries: custom, however, may exempt them in some parts.

5. The administration of the seminary shall be conducted by the bishop, who shall have full control and jurisdiction in the premises. He shall select two of the older priests to assist him with regard to disciplinary matters. He shall also associate with himself, in the administration of temporal concerns, two canons; one to be selected by himself, the other by the chapter.

From the rest of the clergy, two shall be chosen to aid in the management of temporal matters; one of them to be appointed by the bishop, the other by the clergy. (Conc. Trid. sess. xxiii. c. 18.)

A more prudent rule could scarcely have been laid down by the Fathers of Trent. By associating with themselves representatives from the entire clergy in the administration of seminaries, bishops will cause them to take more interest in seminaries, as also to contribute more cheerfully to their support.

156. "The examination of seminarians should be conducted by examiners to be nominated in diocesan synods, or meetings of the clergy." (Conc. Plen. Balt. II. p. 57.)

This paragraph or decree evidently implies public examinations. They would, in fact, seem admirably fitted to promote an honorable emulation among seminarians. They are customary in European seminaries. We are glad to see the system of public examinations adopted by the learned rector of Mount St. Mary's of the West, the well-known theological seminary of the archdiocese of Cincinnati. It is but lately that we saw in the Cincinnati papers a public notice of the examinations to be held in the above seminary: a schedule also of the matter for examination and a list of the text-books employed by the students were added, and an invitation was extended to the priests of the city and vicinity to assist at the examinations.

157. Many of our small diocesan seminaries, it is but too true, could not very well suffer the light of day to shine upon their examinations; they are but poorly supplied with competent professors, their means

being insufficient to enable them to provide for all the requirements belonging to a well-constituted seminary.

It has, moreover, only too often happened that the professors of these small seminaries were, as the Fathers of Baltimore term them, "sacerdotes vagabundi," wandering from diocese to diocese, and who began to teach theology as a last resort, when all else had failed.

Hence the position of a professor of theology was looked upon by the rest of the clergy with mingled feelings of commiseration and contempt. Yet all this cannot be attributed to any personal fault on the part of the various rectors of such institutions. The chief mistake lies perhaps in a strange misapprehension of the proper status due to a professor of theology.

158. The discipline will naturally suffer also under these circumstances. All these defects are easily remedied in provincial seminaries, where a good staff of professors can be engaged, and discipline properly enforced.

As, therefore, in many parts, means are wanting to maintain diocesan seminaries,

provincial seminaries as ordered by the Council of Trent and recommended by the American prelates would seem to be of all others best calculated to train candidates for the priesthood in this country.

We do not deny that exceptions to this rule occur not unfrequently.

159. We finish by citing some of the enactments of the Council of Trent:

"Whereas the age of youth, unless it be rightly trained, is prone to follow the pleasures of the world; and unless it be formed, from its tender years, unto piety and religion. . . . it never will perfectly persevere in ecclesiastical discipline; the Holy Synod ordains that all cathedral, metropolitan, and other churches greater than these, shall be bound to educate religiously and to train in ecclesiastical discipline a certain number of youths." (Sess. xxiii. ch. xviii. on Ref.)

160. Again the Fathers of Trent say:

"Into this college shall be received such as are at least twelve years old, and whose character and inclination afford a hope that they will always serve in the ecclesiastical ministry. They shall be instructed in sacred Scriptures; ecclesiastical works; the homilies of the saints; the manner of administering the sacraments, especially those things which shall seem adapted to enable them to hear confessions; and the forms of the rites and ceremonies." (Ib.)

"They shall always wear the clerical dress." (Ib.)

161. In the same place, the Council of Trent continues thus:

"The bishops as aforesaid, with the advice of two of the chapter, of whom one shall be chosen by the bishop, and the other by the chapter itself, and also of two of the clergy of the city, the election of one of whom shall in like manner be with the bishop, and of the other with the clergy—shall take a certain part out of the entire fruits of the episcopal revenue." (Sess. xxiii. ch. xviii.)

We will subjoin from Lingard an historical outline of the origin of seminaries in England:

"As the first district churches," says Lingard, "were built on the domains of the great cathedral and monastic establishments, there can be no doubt that they were served by clergymen from the same bodies.

"Priests were supplied from three sources:

"1. The parish minsters themselves appear to have furnished many candidates for the priesthood; for the clerks belonging to these minsters were compelled to apply to learning, and the mass priests were enjoined to superintend their religious studies.

"2. We meet with many instances of clergymen who had been educated from their childhood in the schools of monasterial establishments, and were afterward drawn thence to undertake the care of parochial churches.

3. "But the chief resource of the bishop lay in the cathedral monastery, where the clergy were carefully instructed in the duties and trained in the exercise of their holy profession. They were distinguished by the name of canons, because the rule, which they observed, had been framed in accordance with the canons. These communities formed the principal seminaries for the education of the clergy." (LINGARD, Hist. and Antiq. of the Anglo-Sax. Ch. vol. i. p. 163.)

CHAPTER X.

On Holding Ecclesiastical Property.

See Conc. Plen. Balt. II. tit. iv. cap. unic. p. 111. seq.: Walter, Jus Can. lib. vi. cap. i. § 240–246: Conc. Trid. sess. xxii. c 11. De Ref.

§ 33. TRUSTEEISM: RIGHT OF CHURCH PROPERTY AS RECOGNIZED BY CIVIL LAW IN AMERICA.

162. THE Council of Baltimore, in order to restrain undue interference of trustees, repeat and inculcate again the former decrees of councils held in this country. They may be summed up as follows:

1. No church shall be dedicated until the deed has been given to the bishop.

2. No right of patronage exists in this country, as the churches are not built except by voluntary gifts or alms taken up by collections.

3. All bishops should endeavor to render ecclesiastical property safe, by invoking,

where it can be done, the aid of civil laws. If this cannot be done, they should make a testament, constituting one of the other bishops in this country their heir, who will deliver the property to the successor: this latter condition, however, is not to be expressly stated in the will itself.

4. Superiors of monasteries should also make a testament, sending a duplicate to the bishop, if they have not been incorporated.

5. As the civil tribunals in practice scarcely ever recognize the laws of the Church, bishops, in order to shield themselves against any undue interference of these lay tribunals, and protect church property, are obliged to assume the fullest administration of ecclesiastical property.

6. That lay trustees have no inherent right to administer church property, or call and dismiss pastors at will. (C. Plen. Balt. II. l. c. p. 111–120.)

163. The necessity of some of these regulations has been denied by some celebrated writers, who contend that the common law prevailing also in this country, fully recognizes the laws of the Catholic

Church in regard to holding ecclesiastical property. We venture, however, with all deference, to suggest that these writers missed the thesis of the Fathers of Baltimore.

They explicitly maintain that in these United States all citizens have the right of freely practising their religion—that this right is recognized by the civil laws. That therefore "the laws of the Church regarding ecclesiastical property should be observed." (C. Balt. p. 117, no. 199.)

This evidently can only mean, as the illustrious writers already mentioned express it, that the common law even in this country acknowledges and enforces the laws of the Church in this matter.

164. But the bishops add, and herein lies the main point at issue, that in practice civil tribunals scarcely ever carry out the provisions of this common law, and therefore it would not be prudent to allow ecclesiastical property to remain exposed to the whim of a judge. The civil tribunals vary in their decisions in this matter, and hence cannot afford perfect security.

This, we think, is the thesis of the Fathers of Baltimore, and it seems to be

borne out by the frequent practice of courts, as the writers referred to themselves admit.

§ 34. HISTORY OF ECCLESIASTICAL PROPERTY.

165. Before entering upon the nature of the administration of Church property, we shall premise a few words on its history. Then we shall add something on the property of secular ecclesiastics, and that of regulars of both sexes.

In the first three centuries, divine service was maintained and the sacred ministers were supported by the offerings of the faithful. These were administered by the bishop, and divided into three parts: the first for the support of the clergy; the second for the poor; the third for the divine service.

166. Gradually, however, the various parishes acquired real property, and each church or congregation held possessions as a corporate body. This is seen from the edict of Licinius, in 313, cited by Lactantius, De Mort. Persecut. 48, which reads thus:

"And as these same Christians are known to pos-

sess not only those places where they meet, but also others, holding them in the name of the entire body, that is of the churches, not of the single members, you will command their property to be restored to these same Christians, that is to their entire body and community."

167. Each church therefore formed a corporation, and had possessions in its own name. From the sixth to the eleventh century (535–1094), lay people and kings often seized upon church property and lands; and not unfrequently the ecclesiastical authorities themselves would give them to princes. This alienation was severely prohibited. And this prohibition still exists. At the Peace of Westphalia, in 1648, the goods of the Church, that had been grasped by some Protestant princes, were allowed to remain in possession of them, for the sake of avoiding greater evil.

In France, during the Revolution of 1789, all Church property was confiscated, but was partly restored by the Concordat in 1802.

In Russia, England, and lately in Italy, the Church has been despoiled under the semblance of law, and her most flourishing

establishments, both of art and science, have been taken away and declared national property. The injustice of these measures we shall demonstrate a little further on.

168. We pass to the nature and right of property in the Church.

The right of property is generally defined "the legitimate faculty or power of disposing of any thing as one's own." This, again, may be perfect or imperfect. The former means the power of disposing both of the thing itself as well as of its use: the latter refers to either one or the other of the two only.

Man alone can have the right of property, as only a rational being can dispose of property or is capable of appropriating it to himself.

169. It may, therefore, not unreasonably be asked by what right do churches, monasteries, or religious bodies in general, hold property? Surely the church or monastery itself is not gifted with intelligence.

We answer, no church or monastery has property, strictly speaking, as an inanimate body, but as the representative of a com-

munity of rational beings, who are its members. As such, these institutions are considered "moral persons."

170. According to the law of England, bishops, parsons, and vicars constitute corporations sole; as such, they acquire the following rights:

1st. Perpetual succession.

2d. To sue or be sued, implead or be impleaded, grant or receive, by their corporate name.

3d. To purchase lands and hold them.

All churches, therefore, and congregations, in England, constitute corporations. These exist as corporations by virtue of the common law, which, according to Blackstone, "is nothing else but custom arising from the universal agreement of the whole community." (BLACKST. bk. i. ch. 18.)

171. It has, as we have seen, but recently been asserted by distinguished American writers, that the common law of England in this respect obtains also in the United States; that therefore all bishops and pastors, churches, congregations, monasteries, and religious establishments constitute corporations, without standing in need of any particular charter.

The writers, if we mistake not, based their inference on a decision rendered by the Supreme Court in the case of Father Stack and Bishop O'Hara, where the Supreme Court on appeal recognized the laws of the Church, and decided accordingly.

This is true to a certain extent, yet we venture to say that the common law is not so universally carried out as to afford security for church property; nor is it such as will practically be of much benefit. Churches and congregations are compelled to become incorporated if they wish to enjoy the privileges of corporate bodies. The common law, as it exists here, is of little practical moment.

172. Hence we fully agree with the Fathers of Baltimore when they say:

"That the laws of the church, ought to be recognized and carried into effect by the civil power. But unfortunately they are not." (P. 117.)

The law of the Church is plain. She is a perfect and supreme society. Hence she has the right of property, which is necessary to maintain divine worship and support her ministers. This right she claims

by divine institution. Now, if she has a right of property as a society, it is apparent that its administration belongs to her rulers: in other words, the Pope and bishops are the administrators of all church property.

Hence laymen have no right of property in the church. Therefore the absurdity of trustees claiming the deed of a church, or the right of disposing of its revenues, is apparent, as being contrary to the law of God as well as of the Church.

If the Church, therefore, allows laymen to assist in administering church property, it is only by concession, not by any right, that she does so.

173. We subjoin, by way of explanation, from Blackstone, some remarks on the foundation of the right of dominion or property:

"All dominion over external objects, over the earth and the things therein, has its original from the gift of the Creator to mankind in general. While the earth continued bare of inhabitants, it is reasonable to suppose that all was in common among them; and that every one took from the public stock what he stood in need of to his own use. But when mankind increased in number, craft, and ambition, it became

necessary to appropriate to individuals, not the use only, but the very substance of real or immovable possessions; otherwise innumerable tumults must have arisen, and the good order of the world must have been perpetually broken in upon.

"The only question remaining, is 'how' property in land first became actually vested; and as occupancy gave right to the temporary use of the soil, so it is agreed on all hands that it originally gave the right also to a permanent property in the substance of the earth itself." (BLACKST. bk. ii. ch. i.)

§ 35. ADMINISTRATORS MUST ANNUALLY RENDER AN ACCOUNT TO THE ORDINARY.

174. The Council of Trent has wisely enacted that parish priests and all others intrusted with the administration of church property, shall annually render an account of their acts in this regard. Its decree is as follows:

"The administrators, whether ecclesiastical or lay, of the fabric of any church whatsoever, even though it be a cathedral, as also of any hospital, confraternity, charitable institution called Mont de Pieté, and of any pious places whatsoever, shall be bound to give in once a year an account of their administration to the ordinary."

No exception whatever is therefore

admissible to this law. It applies equally to all property of religious of both sexes—to houses of the Sisters of Charity in this country, as well as all other religious communities. Even where a privilege to the contrary exists, the ordinary shall also be employed jointly with those whose duty it is to examine the accounts.

175. In accordance with this injunction, the bishops of the United States, for the greater part, have prescribed that every pastor being the administrator of the church funds should give an accurate financial statement of his parish once a year. That this ordinance, when properly complied with, will redound to the good of the congregation as well as the pastor, few, we think, will gainsay. That it will prevent serious financial embarrassments is no less proven by experience. Yet it has been said that in this country church property does not fall under this rule, at least not in the strict sense of the term; that here priests or pastors are obliged to collect church funds with no ordinary effort, and frequently with no slight degree of annoyance, while in old Catholic lands quite the

reverse is the case, ecclesiastical possessions being there already well established and of themselves bearing interest; that the Council of Trent could have had in view only such property, demanding of its administrators an annual account; that therefore this law does not hold in this country, or at least applies not with the same rigor as elsewhere.

Nor would these objections seem to be altogether groundless: certain it is that the Fathers of Trent had in mind a state of things entirely different from ours.

Though, in consequence, this annual account seems not to be binding with us by virtue of the law of Trent, yet it would appear that, from the analogy of the cases, bishops may demand annually a financial statement of each pastor.

§ 36. MODE OF SECURING ECCLESIASTICAL PROPERTY IN THE DIOCESE OF NEWARK.

176. The mode of securing ecclesiastical property in the Diocese of Newark is contained in the Act for the Incorporation of Catholic Churches, State of New Jersey,

approved February 17th, 1864. Its main features are:

1st. Any Roman Catholic church or congregation may be incorporated according to the provisions of this act.

2d. The bishop, as well as the vicar general of such diocese, and the pastor of such congregation, or a majority of them, may select two lay members of such congregation, thus constituting a board of trustees.

As will be seen from this enactment, the majority will always be on the side of the clerical members of the board. This is but consonant to the law of the Church, which recognizes no right of administering church property inherent in laymen, or lay trustees.

3d. The bishop, vicar general, and the respective pastors, and their successors, are, by virtue of their office, trustees of all congregations; the lay members hold their office for one year only, when the old ones may be reappointed or new ones selected.

177. No election of lay trustees, as is evident, can take place, according to the Act for the Incorporation of Churches; such trustees being simply chosen by the ec-

clesiastical superiors. (See Statuta Nov. Dioc. p. 80–90.)

178. We have been told that, in some churches, the people were called together by the pastors in order to ballot for the two lay members of the board.

This evidently cannot be considered an election in the strict sense of the term; but rather a means of finding out which of the laymen of the parish are acceptable to the congregation in the capacity of trustees. Nor would such voting be opposed to the act of incorporation. Yet is it nevertheless fraught with danger. The people, thus convened, would but too probably claim the right of election in the strict sense of the term; and should their choice be disregarded, serious consequences might follow from it.

179. A congregation becomes incorporated in the following simple manner: All the members of the board of trustees shall sign a certificate, setting forth the name by which they and their successors shall be known and distinguished as a body corporate, and transmit the said certificate to the clerk of the Court of Common Pleas

of the county in which such church is located, whose duty it shall be forthwith to file and record the same; and thereupon such church or congregation shall be a body corporate, by the name or title so taken, certified, and recorded. (Act of Incorporation.)

CHAPTER XI.

Private Property of Ecclesiastics.

See Conc. Plen. Balt. II. tit. iii. c. vi. no. 157. p. 97; Soglia, vol. ii. § 119: Kenrick, vol. i. tract. x. § 3. p. 300, Moral.: Walter, Jus Can. § 257–259. p. 504.

§ 37. VARIOUS KINDS OF PROPERTY WHICH CLERGYMEN MAY HOLD IN THEIR OWN NAME.

180. THE Fathers, renewing the precepts of the canons, declare that ecclesiastics should not carry on trade in property or money; nor pursue mercantile speculations, etc. (P. 97. n. 157.)

Neither should they receive money on deposit, except by the written permission of the bishop. This is complied with by sending a written list of deposits to the bishop at the end of the year.

The property of ecclesiastics is divided,

1st. Into such as is received from their parents by inheritance or gift, or in any other secular way.

2d. Into that which is acquired by industry, e. g. from extrinsic labor attendant upon ecclesiastical functions.

3d. Again, into such as accrues from the ecclesiastical revenue, by living economically and frugally.

181. Of all these three sorts of possessions, ecclesiastics have full right of proerty.

The reason is, that they are but the compensation of external labor in the administration of the sacraments. (C. S. Pœnit. 1824, apud Gury, De Just. vol. 1. p. 419.)

Moreover, neither any positive law nor the nature of the ecclesiastical state incapacitates clergymen from holding property. Though called into the vineyard of the Lord, the priest takes no vow of poverty, and therefore retains the full right of property, within the limits laid down by the Church. (Bened. XIV. De Beatif. l. 3. c. 34. n. 23.)

182. Besides those already mentioned, there are goods purely ecclesiastical, which are derived from the income of a benefice. All canonists agree that they can be used as a means of honorable livelihood, and

that whatever remains over and above should be given to the poor. In case, however, of neglect to do so, no strict obligation of restitution arises.

183. It may be asked whether the salary of pastors and assistants in this country is considered a benefice, and whether in consequence there exists any obligation of giving what remains to the poor.

We answer:

1st. That the perquisites of the sacraments of baptism and marriage are not intended, according to the canons, to be used for the support of the household of clergymen.

2d. Independently of them, the income of the benefice is the means of support. Hence the salary, in this country, is intended to furnish the means of sustentation.

Now, as there are no benefices in these States, it cannot strictly be said that what is over and above out of this salary must be given to the poor.

But even though we should admit that the salary, or income, is a benefice, it is generally such that nothing superfluous remains, if it even suffice to support the

household; so that we scarcely think that any scruples need be entertained in this regard. If, however, large tracts of land belong to the Church, the revenue should be considered the income of a benefice. (KENR. vol. i. p. 300.)

The poor, of course, should always be looked upon as entitled to a share of the solicitude of priests.

CHAPTER XII.

Right of Property of Regulars and Nuns.

C. Balt. tit. viii. De Regular. c. i. ii. p. 209–218 : Gury ed. Ball. tom. ii. tract. De Stat. c. iii. p. 81 : Conc. Trid. sess. xxv. c. 2.

§ 38. REGULARS OF BOTH SEXES, BOUND BY SOLEMN VOWS, MAY HOLD PROPERTY AS A COMMUNITY : AS INDIVIDUALS, THEY CANNOT.—SUCH AS HAVE BUT SIMPLE VOWS MAY HAVE PROPERTY, BUT CANNOT LICITLY DISPOSE OF IT WITHOUT PERMISSION.

184. ALL religious, of both sexes, bound by the solemn vow of poverty, are incapable of the right of property. The community, however, or monastery, has this right. No religious, therefore, can hold property as an individual, or personally and privately; though all the members collectively, or as forming a community, can do so.

Hence the maxim, whatever a religious

acquires, is not for himself, but for the monastery. (See C. Trid. sess. xxv. c. ii. on Ref.)

The words of the Fathers of Trent are:

"For no regular, therefore, whether man or woman, shall it be lawful to possess or hold as his own, or even in the name of the convent, any property, movable or immovable, of what nature soever it may be, or in what way soever acquired; but the same shall be immediately delivered up to the superior, and be incorporated with the convent. Nor shall it henceforth be lawful for superiors to allow any real property to any regular, not even by way of having the interest or the use, the administration thereof, in commendam. But the administration of the property of monasteries, or of convents, shall belong to the officers thereof, only removable at the will of their superiors." (Sess. xxv. c. ii. on Ref.)

That the community, however, may hold property, is thus set forth by the Council of Trent:

"The Holy Synod permits that henceforth real property may be possessed by all monasteries, with the exception, however, of the house of the brethren of St. Francis (called) Capuchins, and those called minor observants." (Sess. xxv. c. iii. on Ref.)

We pass to the right of property of those religious that have but simple vows.

185. Any religious, of either sex, bound

merely by a simple vow of poverty, has the right of direct dominion of his property. That is, he may possess, though he cannot lawfully dispose of property without permission from the superior. Yet, if he should do so, even against the will of the superior, the act would be valid, though illicit. This holds good, even though a religious who is bound only by simple vows does not belong to an order or congregation approved by the Holy See, but to one approved merely by the ordinary. For it is the nature of simple vows that they oblige the religious to renounce all right of disposing of property without the permission of the superior. (Gury, tom. ii. p. 82. ed. Baller. 1869.)

186. From this we draw the following practical conclusions:

(*a*) That all Sisters of Charity retain the direct right of property; can hold possessions in their own name, and have private property; they cannot, however, dispose of it lawfully without the permission of their superior.

(*b*) The same applies to all the other nuns and sisters, with the exception of

some convents of the Visitation; all except the latter having but simple vows. (See Decr. S. Prop. 1864, ap. C. Balt. tit. viii. c. ii.)

(*c*) The Holy See, however, can allow, and has in fact in many instances allowed nuns bound by solemn vows to have the right of property as individuals.

In 1820, this right was granted to the nuns of Belgium, though under solemn profession.

(*d*) Again, the Holy See could even enjoin absolute poverty in the case of simple vows, it being a matter of ecclesiastical discipline.

(*e*) All these conclusions apply equally to religious of both sexes, male and female.

CHAPTER XIII.

On Sacraments in General.

See O'Kane, Notes on Rubrics, c. iv. n. 297. p. 129: Conc. Plen. Balt. II. tit. v. c. i. p. 121–126: Walter, § 268: C. Trid. sess. vii. præem.

§ 39. DIVINE INSTITUTION OF SACRAMENTS.

187. SACRAMENTS, which are instruments of grace, were instituted immediately by Christ, though some of them may have been promulgated by the apostles.

Their matter and form, too, as the Church holds, were ordained by the Saviour. The Church claims no power to determine or change the substance of the sacraments.

But to her have been confided their administration, and the various ceremonies pertaining to it. These are matters of discipline. They may suffer change in the course of time.

Protestants maintain that only two sa-

craments, namely, baptism and the Lord's supper, were instituted by Christ. But even these two are being cast off by them, and faith is proclaimed all-sufficient.

188. Various popes have laid down rules to be observed in the administration of the Sacraments. Clement VIII., in 1596, issued the Roman Pontifical for episcopal functions; as also the Ceremonial of Bishops in 1600. Paul V. caused the Roman Ritual to be printed for the use of parish priests. This is at present, with but slight changes, generally used.

§ 40. LANGUAGE: INTERROGATIONS IN BAPTISM ARE PUT IN THE VERNACULAR: VARIOUS OPINIONS.

189. The Latin language should be used in the administration of the sacraments. Some writers, indeed, thought that the vernacular should be introduced. This, however, is contrary to the spirit and law of the Church. Besides, the rites and ceremonies can be explained by plain and well-adapted instructions, given either before or after the administration, or at some other convenient time.

190. Here the question occurs whether it is allowed sometimes to use the vernacular in the interrogations of baptism. The Council of Baltimore quotes and approves the following decree of the First Provincial Synod of Baltimore:

"We declare, that according to the prescription of the Roman Ritual, priests are bound to use the Latin language in the administration of the sacraments and burial of the dead; and if they should think it expedient for the sake of explanation, to add the translation in the vernacular, they shall make use of that only which is approved by the ordinary." (N. 214, p. 124.)

Again:

"The Fathers strictly command all priests never to omit the Latin form of prayers." (Ap. Conc. Plen. Balt. II. p. 124, n. 215.)

From all this, O'Kane, in his "Notes on the Rubrics," concludes:

"But at least, it is certain that the priest is never justified in simply omitting the Latin and substituting a translation in any of the interrogations or prayers of the ritual." (L. c. p. 131.)

Add to this an answer of the Sacred Congregation of Rites, September 12, 1857, in which, to the question whether the interrogations used in baptism could be recited in

the vernacular, or at least repeated in it after being pronounced in Latin, the answer was in the negative.

191. This would even, according to O'Kane, make it necessary to admit no one as sponsor who is not instructed to answer the interrogations in Latin, which is simply impracticable. Besides, a custom has pretty generally prevailed of proposing them (these interrogations) in the vernacular, since sponsors for the most part are unable to answer in Latin. The editions of the ritual used in Ireland, England, and America give a translation of the questions and answers annexed to the Latin form.

That which has been published for the use of the English Church, pursuant to a decree of Westminster, does not differ in this respect from those that preceded. The compendium published for the use of the clergy in the United States, likewise gives a translation of the questions in English, French, and German. This compendium was published according to a decree of the Third Provincial Council of Baltimore, with the approval of Gregory XVI. (O'KANE, l. c. p. 129.)

192. The custom of putting the interrogations in the vernacular, if we are correctly informed, prevails all over the United States, and this custom would seem to be the best interpreter of the law. In this sense the following may be quoted:

"The priest goes to the entrance of the church, or standing near the baptistery, he asks the questions prescribed in the ritual, and this he does in the vernacular idiom, which is always to be used when the ritual prescribes an interrogation that is addressed to laymen." (ROMSEE, vol. iii. pars iii. c. i. art. i. § viii. p. 351.)

The same opinion is advanced by Baruffaldi (tit. xi. no. 3. 1792), and seems to be the only one that can practically be carried out.

193. Nor do we think the argument adduced from the decree of the Fourth Provincial Council of Baltimore to the point. The decree does not say, "interrogationum" forma nunquam omissa, but, "precum" forma nunquam omissa. The difference between the two seems apparent enough without any comment. The argument of O'Kane, therefore, is not to the point.

In this opinion I am confirmed by Kenrick, who says that the custom which exists in some parts of the United States, of reciting some of the "prayers," of baptism and marriage in English, was abolished by the First Council of Baltimore, which granted, however, that the "prayers" having been recited in Latin, an English translation might be added. This is to be done sparingly, lest the Latin "prayers" should gradually be omitted entirely. (KENR. Mor. vol. ii. tract. xiv. p. 102.)

The word prayer is repeated here three times, whilst the word interrogations is never used. Hence O'Kane seems to stretch the decree of the First Council of Baltimore too far.

194. The only valid argument we can see is the answer of the Congregation of Rites, September 12, 1857. But this decree is, strangely enough, not even alluded to by the Fathers of Baltimore.

If it meant anything at all, it would forbid even the repeating in the vernacular, questions that had been recited in Latin. Hence, too, it would be of equal force against all translations of these questions.

Universal custom, and the utter impracticability of answering those questions in Latin, seem to be sufficient reasons for maintaining that the interrogations used in the administration of the sacrament of baptism may be made in English.

§ 41. RITUAL: IS THE FORM OF MATRIMONY PRESCRIBED IN THE ARCHDIOCESE OF BALTIMORE BINDING THROUGHOUT THE UNITED STATES?

195. As regards the ritual to be used, the Council of Baltimore renews a former decree: "Resolved, that a ritual be issued conformable to the Roman, . . . that it be printed at Baltimore, by authority of the Most Reverend Archbishop, and be followed all over the United States." (P. 124.)

196. This ritual differs somewhat from the Roman in regard to matrimony. The mandate of the Most Reverend Archbishop of Baltimore is as follows:

"In order that uniformity may exist in those rites that are added in the celebration of marriage, according to the received custom of this province, we enjoin all priests of this diocese in future to use only the following formula:

"1st. After the contracting parties have expressed their consent and joined hands, . . . first the bridegroom, then the bride, in a clear tone of voice, pronounce these words: I, N. N., take thee, N. N., for my lawful wife (husband), to love, and to hold, from this day forward, for better, for worse, for richer, for poorer, in sickness, and in health, till death do us part.

"2d. The priest then says, Ego conjungo vos, etc.

"3d. Whilst the bridegroom puts the ring on the finger of the bride, he says, With this ring I thee wed, and I plight unto thee my truth in the name of the Father, and of the Son, and of the Holy Ghost. Amen."

This is dated Baltimore, Easter Sunday, 1867, and signed by Archbishop Spalding.

197. Two questions may here be asked:

1st. Is this addition to the Roman ritual lawful?

2d. Is it obligatory, even if lawful, on all the faithful in the United States?

As regards the first question, we answer that it is lawful.

The ritual itself, after the form of marriage, has these words: "Or other words may be used according to the custom of each province."

198. In regard to the second question, it is equally clear that it does not bind

except in the Diocese of Baltimore. This is apparent from the very mandate itself: "We enjoin on priests of this diocese (Baltimore) in future to use but the following formula."

Nor did the archbishop act by command of the Plenary Council. For no decree was issued giving him power either to change or insert anything as obligatory outside his own diocese. The Council merely renews the decree that the ritual be published at Baltimore, under the supervision of the archbishop.

This mandate, then, of itself, does not bind outside of Baltimore.

199. But, at least, may it not be followed in other dioceses? We should rather say no. The custom of each province should be observed, according to the ritual. Now, with but few exceptions, we think custom favors the form of marriage simply as it is given in the Roman ritual, and translated by order of the Council of Baltimore.

This, therefore, should be observed, until some positive enactment to the contrary is made by the respective bishops.

The form, we may remark, prescribed in

the mandate, is the one which is universally used in mixed marriages. By the mandate, it is to be adopted in purely Catholic as well as in mixed marriages.

200. Of late this form has not unfrequently been employed in Catholic marriages, even outside the Archdiocese of Baltimore. In the new edition of the ritual of 1872, as also the large one of 1873, this form has been embodied in the marriage formula, which would seem to indicate the general tendency of adopting it everywhere.

CHAPTER XIV.

On Sacraments in Particular.—Baptism.

Conc. Plen. Balt. II. tit. v. c. ii. p. 126: O'Kane, Notes on Rubrics of Rom. Rit. c. iii. p. 95: Franzelin, De Sacr. in Genere, thesis xvi. xvii. p. 197 seq.: Walter, Jus Can. § 272. p. 531, edit. Bonn. 1839.

§ 42. PASTORS ARE FORBIDDEN TO BAPTIZE CHILDREN NOT BELONGING TO THEIR PARISH.

201. THE Fathers of Baltimore but too correctly remark that so many of our Protestant friends grow up and become old, and finally drop into the grave, without ever having entered the Church of Christ by baptism, though they falsely bear the name of Christians. Pastors should sharply reprehend the negligence of Catholic parents, who but too frequently defer for a long time the baptism of their infants. (C. Balt. p. 127, n. 225.)

202. Again, they say:

"The ordinary minister of baptism is the bishop in his diocese, the pastor in his parish.

"Hence such priests as rashly baptize children brought from another parish or diocese, when they could easily have been baptized by their own pastor, are indeed in every respect most reprehensible. This abuse, already noted in the Sixth Provincial Council of Baltimore, we again condemn and prohibit." (C. Balt. p. 128. n. 227.)

The difficulties arising from this point are neither few nor slight.

It may safely be said that the strict observance of this decree would promote harmony among the clergy, and further the interests of religion among the people.

203. It may happen that, on account of serious reasons, parishioners have an invincible repugnance to have their children baptized by their pastor. It may not, in consequence, be unlawful for a priest in rare and exceptional cases to baptize, under such circumstances, children not belonging to his parish.

The Fathers of Baltimore censure those priests who rashly, i. e. unnecessarily and without any reason, baptize persons outside their parish. In all cases, however, it will be well to obtain the consent of the respective pastor.

204. Another great difficulty occurs here. In places where there are purely German and English speaking congregations having separate churches, the faithful of the latter will often hear mass at the German church, and also present their children for baptism to the pastor thereof. Now it would seem that the latter has no right to baptize such children. German Catholic churches are very often built at the door of those of English-speaking congregations, and this is allowed by the ordinary, as it is well understood that the German Catholics should belong to the German pastor, irrespective of place. Hence jurisdiction is given him over the Germans, not the English-speaking people. We speak, of course, of ordinary cases, as no one will deny that sometimes exceptions must be allowed.

§ 43. BAPTISM OF CHILDREN OF NON-CATHOLIC PARENTS.

205. Regarding the baptism of children of non-Catholic parents, the following is laid down:

"We think that the children of non-Catholics brought by the parents themselves, should be baptized as often as there is hope of a Catholic education being given them. Care, however, must be taken to have a Catholic godfather or godmother. The priest should remember that, in danger of death, whenever the occasion presents itself, all infants not only can, but should be baptized." (Conc. Plen. Balt. II. p. 128. n. 229.)

206. Besides this, another case not unfrequently occurs.

The mother, for instance, may be Catholic, the father a heretic. She wishes to have the child baptized a Catholic, but he refuses his consent. The mother then secretly goes to the Catholic pastor, and requests him to baptize her child. Can he comply with her request?

We answer, yes. St. Liguori (Hom. Apost. tract. xiv. punct. ii. n. 21.) maintains:

(*a*) That children of infidel parents cannot be baptized against their will, if they remain with their parents, and have not yet attained the use of reason.

(*b*) Children of heretics, however, can be baptized even against the will of their parents, though it be not always expedient

to do so. The reason is, that heretics are "per se" subject to the laws of the Church; whilst infidels are not

In our case, the mother being a Catholic, there is no danger that the child will lose its faith; and hence it should be baptized even against the will of the father.

Besides, if married according to the rules of the Church, he was obliged to promise to have his children, both male and female, brought up Catholics. He cannot, in consequence, refuse now to allow this.

§ 44. SPONSORS.

207. The sponsors, too, should be Catholics. (Rit. Rom. apud C. Balt. p. 129.)

In this respect, we may observe, with O'Kane, that an infidel, in the strict sense, that is, one who is unbaptized, cannot act validly as sponsor. Again: In mixed communities, where Catholics and Protestants live together, and often even intermarry, a Protestant is sometimes selected to act as sponsor, and this is the cause of great embarrassment to the priest. He cannot, however, in any circumstance, admit one

who is not a Catholic. Laymann and one or two others, speaking of Germany, hold that he might, in cases where the refusal would give very great offence; but in this they are opposed to the common opinion of theologians. (O'KANE, p. 95.)

208. In such circumstances the priest might appoint a Catholic sponsor, who would really act as such, and permit the Protestant to be present merely as a witness, taking care to note this in the registry; or he may omit in the ceremony whatever regards the sponsor, and have none at all. Better, according to Dens, to baptize solemnly without a sponsor, than admit a heretic to act as such; and Bouvier would apply the same rule to all who are clearly excluded by the rubric. (Ib.)

209. If the priest has been careful to inquire beforehand, and ascertain who are to be presented as sponsors, he will probably find some pretext for setting aside those who are unfit, without giving offence.

210. Again, the same author says:

"The secular clergy are not excluded from the office of sponsor by this rubric, but they have been sometimes excluded by diocesan or provincial statutes.

Some have doubted whether the priest who baptizes could at the same time act as sponsor, since he should thus respond to the interrogations put by himself, etc.

"It is very probable, however, that he can do so by substituting another to give the responses and act in his place. Even this substitution is unnecessary, when there is a godmother, for she can answer the interrogations.

"It is certain that a sponsor can act by means of a proxy, and in this case, the principal, and not the proxy, contracts the relationship, according to a decision of the Sacred Congregation." (J. O'KANE, Notes on the Rubrics, c. iii. n. 231–234, p. 95, 96.) "Parents cannot act as sponsors of their children." (O'KANE, l. c. n. 223, p. 91.)

211. Regarding baptism given at private houses, the Fathers of Baltimore say:

"We command that in future priests should never dare to confer baptism outside the church, except in cases of imminent danger of death, in cities having one or more churches.

"But if, on account of inclemency of the weather, roughness of roads, poverty of parents, or some other serious reasons, this cannot be done, we leave it to the prudence and conscience of the missionary to baptize them at home, with all the ceremonies of the Church." (C. Balt. p. 131.)

212. The statutes of the Diocese of Newark allow children living more than three

miles from the church, to be baptized at home. (Statuta, edit. 1869, cap. ii. § 5.)

These statutes also enjoin that the names of those who are baptized should be immediately recorded on the baptismal register, in the priest's own handwriting. (Ib. § 4.)

This is well worthy of attention, and if carried out, will prevent the names of such as were baptized from being lost or forgotten.

Continued negligence in this matter, is more or less sinful.

Again:

"When there are two sponsors, they should be of different sexes—not two males, nor two females." (O'KANE, p. 91.)

"When there is only one sponsor, it is usual to select one of the same sex with the child; but there is no obligation, since the words of the rubric, taken from the decree of Trent, leave the choice free." (L. c. n. 222. p. 91.)

§ 45. CEREMONIES OF ADULT BAPTISM.

213. We have often been asked, whether the formula of infant baptism which has been used by dispensation in the baptism of adults, may still be employed in the latter. To this we ingenuously reply that we

do not know how to answer. The Fathers of Baltimore petitioned the Holy See to extend the permission of adopting the short formula in the baptism of adults, which expired in 1870, for ten or twenty years further.

However, the Holy See, replied:

"Let the respective bishops apply again, when the time of the last concession has expired." (Ap. Conc. Plen. Balt. p. 133.)

214 The solution of the difficulty therefore rests upon a question of fact. Have the respective bishops applied for and obtained an extension of this privilege?

To this question we cannot return a satisfactory answer. In the Diocese of Newark, nothing definite is known by the clergy.

The bishop may possess such a privilege. But the fact has never been communicated to the priests, and they are left to guess whether or not the faculty has been prolonged. The same, we are informed, is the case in various other dioceses. Hence a diversity of practice in this regard is gradually becoming prevalent. Some priests take it for granted that these privileges

have been renewed again; others, however, doubt this.

The former, of course, use the ceremonies of infant baptism even in the baptism of adults; the latter are not always consistent in the matter—some of them using the short form; others, the long one. It would therefore seem desirable to have some positive measures adopted on this point by our prelates. (Cf. O'KANE, l. c. n. 459. p. 193.)

215. In the United States of America, until recently, the ceremonies prescribed for infant baptism were used in the baptism of adults also, in virtue of faculties granted by the Holy See. In 1852, these faculties were renewed only for five years, with an intimation that they should not be again renewed; and accordingly, since 1857, the American clergy are required to observe what is prescribed by the rubrics for adult baptism. (O'KANE, n. 459, p. 193.)

This, at first sight, would seem to conflict with the petition addressed by the Fathers of the Second Plenary Council of Baltimore to the Holy See, asking for an extension to all the dioceses in America of the per-

mission to use in adult baptisms the ceremonies prescribed for the baptism of infants, which permission had existed in some dioceses till the year 1870.

The Fathers of Baltimore here evidently take it for granted that in some dioceses this privilege existed up to 1870; while O'Kane contends that in 1857 it had become extinct in all dioceses. This discrepancy arises perhaps from the fact that bishops of some dioceses obtained particular indults, while O'Kane refers to the general state of affairs. Any other supposition would oblige us to infer that O'Kane fell into an error of fact.

Nor is it allowed to baptize adults, who are converts, and whose former baptism appears doubtful, simply with natural water, omitting all the ceremonies. (Conc. Plen. Balt. l. c.)

§ 46. RECEPTION OF CONVERTS INTO THE CHURCH.

216. In regard to the reception of converts into the Catholic Church, the Sacred Congregation of the Holy Office has laid down the following method :

"1st. If baptism is conferred absolutely, no abjuration or absolution follows, as all sins are washed away by the Sacrament of Regeneration.

"2d. If baptism be repeated conditionally, the following will be the manner of procedure:

"(*a*) Abjuration, or profession of faith.

"(*b*) Conditional baptism.

"(*c*) Sacramental confession, with conditional absolution.

"3d. When the former baptism is judged to be valid, abjuration only and absolution from censures take place."

§ 47. BAPTISM OF HERETICS.

217. But here another difficulty presents itself. When is the baptism of heretics to be considered either doubtful or valid? Is there any certain criterion? The Holy See has repeatedly answered, that no fixed rule can be universally established—that each case must be examined apart. Now by what rule can we be guided in this examination? O'Kane divides the sectaries into three classes—those who are certainly baptized, those who are certainly unbaptized, and those whose baptism is doubtful. (O'KANE, Notes on Rubrics, p. 189.)

As to those of the first class, no one, we believe, says O'Kane, doubts that baptism is validly conferred, not only in the Greek Church, but amongst the Eutychians, Nestorians, and other Oriental sects; and the same is true, according to Bouvier (De Bapt. c. vi. act. 2. § 3), of the sect known in France as "La Petite Eglise." These sects not only use rituals which prescribe the essential matter and form, but also profess the Catholic doctrine regarding the efficacy and necessity of baptism, which is a sufficient guarantee of the care that is taken to have it properly administered. When a convert, therefore, from any of these sects, is received into the Church, he is not to be baptized. "He simply makes the abjuration and confession." (O'KANE, p. 190.)

218. To the second class, namely, those who are certainly not baptized, belong those individuals who were never baptized, owing to the neglect of parents, who look upon the baptism of their children as a useless ceremony, though they themselves are members of some sect professing to hold baptism. (O'KANE, l. c.)

That such is but too frequently the case,

is attested by the Fathers of Baltimore. (Conc. Plen. Balt. II. l. c. n. 225.) To this class must be added some sects that reject baptism altogether, as the Quakers; and converts from amongst them should therefore be baptized absolutely. (O'KANE, l. c.)

219. The third class, continues O'Kane, "those whose baptism is doubtful, embraces almost all the sects that go under the general name of Protestants: most of them, it is true, in their rituals prescribe all that is essential to baptism, and if we had sufficient security that it is always administered by them in exact accordance with their rituals, we should have no reason to doubt its validity. But their errors regarding the efficacy and necessity of the sacrament gradually lead to habitual carelessness, and frequently substantial defects in its adminstration, so as to leave reasonable ground for doubting, in any given case, whether it was rightly conferred."

Hence the practice now so extensively received of baptizing, sub conditione, converts from the various sects of Protestanism; though inquiry should be made in

each case. (O'KANE, l. c. p. 191; PERRONE, De Bapt. c. v. note.)

220. Of baptism in the Anglican Church, this author tells us, "if we could have sufficient certainty about the baptism conferred in any Protestant sect at the present day, it would be about that conferred by the Anglicans; for the Book of Common Prayer, which contains their ritual, prescribes all that is essential to the sacrament, and, moreover, seems to convey the Catholic doctrine respecting its efficacy and necessity; yet there is always a sufficient reason to doubt, in any particular case, whether it has been actually conferred in the manner described by the Prayer Book."

Many of the Anglican ministers simply ridicule the supposition that the salvation of a child depends on whether or not it has been washed with water. Since, then, the validity of the rite depends on the application by the minister of the proper matter and form with the intention of doing what the Church does, it cannot be surprising that a doubt should be entertained whether it may not have been invalidly "performed by men who confessedly think it of little importance." (O'KANE, p. 192.)

221. "Again, as a matter of fact," O'Kane informs us, "it is very often administered in a manner which leaves its validity doubtful.

"It is admitted that baptism by aspersion or sprinkling is valid; but if the water which is sprinkled falls merely on the dress, it is certainly null; if it falls only on the hair and does not touch the skin, the baptism is at least doubtful; and the same is to be said, if not more than a drop or two should touch the skin. Now it is well known that very frequently the minister contents himself with dipping his finger in the water and throwing one or two drops on the child, without much anxiety as to whether they may touch the skin or merely fall on the dress. . . . Hence it cannot be surprising that," as a general rule, "converts from the Anglican Establishment as well as those from other Protestant sects are baptized conditionally." (O'KANE, Notes, p. 192.)

"If, therefore, as is commonly the case, with a convert from any sect, a reasonable doubt remains, he should be baptized conditionally." (O'KANE, l. c. p. 189–195, 3d edit. Donahoe, Boston.)

This, we think, is clear, and sound, and needs no comment.

222. We merely point to the fact that, as O'Kane says, the doctrine of the sectaries on the efficacy and necessity of baptism, and the consequent carelessness of these men in its administration, is one of the grave reasons that should induce us to

doubt the validity of this sacrament as conferred by heretics.

This must not be misunderstood. It is, as all know, not necessary to hold the Catholic doctrine on baptism in order to administer it validly. It is merely requisite to have the intention of doing what the Church does. Hence a Jew, who certainly does not believe in the Catholic teaching on baptism, its efficacy and necessity, yet may validly baptize if he but intends to accomplish what the Church does. Nor is it essential that he should have the purpose to perform what the "Catholic" Church does —the general intention of doing what the true Church does, whoever she may be, being sufficient. Neither is it indispensable that he should intend this in a particular manner, that is, to perform a sacramental rite conferring grace; for this cannot be the intention of a Jew, who knows nothing at all about the sacraments in general or in particular. It is sufficient, then, that he should direct his intention to the act in a general manner, or, as theologians say, with but an indistinct knowledge of the nature of the action he performs. Thus Altisiodorensis says:

"The general intention is expressed in the word 'baptize,' and that expression suffices for the intention of the Church, of effecting namely what the Church does, although one does not believe that it has any efficacy." (Apud FRANZELIN, De Sacr. in Gen. thesis xvi. p. 206.)

223. It is not, therefore, the defect in doctrine that renders the baptism of heretics invalid. But it is rather their negligence in the administration, which is indeed the result of their erroneous belief. Yet it must not be imagined that the intention is not essential. The pouring of water and the pronouncing of the form may be done in jest and ironically, and if so done, they cannot be for a moment considered as sacramental actions.

The matter and form must be administered in the name and authority of Christ, or, in other words, the action must be performed ministerially or officially. (FRANZELIN, l. c.)

The sacramental action must therefore be wrought formally, not simply materially; for it becomes a sacrament or channel of grace, only when it is morally the act of Christ himself. Hence the general inten-

tion of doing what Christ instituted is essential to a sacrament.

224. This teaching is confirmed by the condemnation of proposition 28th by Alexander VIII., Dec. 7th, 1690, which is as follows: "That baptism is valid which is conferred by a minister who observes the entire external rite and form of baptism, but who within his heart makes this resolve: I do not intend to do what the Church does." The censure applies to the erroneous teaching of heretics, not to the doctrine of Catharini, whose opinions must not be confounded with those of the so-called reformer. In fact, may it not often occur that an heretical minister should in his heart positively exclude the intention of the Church, as most of them seem to think baptism to be a mere external rite, if not a farce?

It would appear, then, that there are many grave reasons upon which is based the custom so generally prevailing of baptizing conditionally converts.

It may finally be asked, are those converts whose previous baptism is doubtful, and who are to be baptized conditionally,

required to make a full sacramental confession, or are they merely to be advised to confess one sin in order to obtain absolution?

Some theologians held that they were not bound to make any sacramental confession, as the obligation was doubtful, and therefore not binding. Many confessors acted accordingly. But it has been decided by a recent decree of the Holy Office, Dec. 17, 1868, that such converts must make a full sacramental confession. (O'KANE, p. 195.) The absolution must be conditional. This holds good a fortiori, when the previous baptism is judged valid, and when the abjuration only is required. A full sacramental confession must then be made, either from the date of baptism, when received as an adult; or from the age of seven, when received in infancy.

CHAPTER XV.

Confirmation.

See Conc. Plen. Balt. II. p. 136. n. 252, 253 : Kenrick, Mor. ii. tract. xvi. De Confirm. p. 125 seq. : Statuta Dioc. Novarc. c. ii. § 10. edit. 1869. p. 24.

§ 48. SPONSORS.

225. THE Fathers of Baltimore among other things inculcate the following :

"Though it belong not of necessity to this sacrament that there be a godfather and godmother, since, however, such is the praiseworthy custom of the Church, prescribed by the holy canons, bishops should earnestly strive to introduce this discipline everywhere, as has been already done in several provinces. Candidates for confirmation will each have a separate sponsor, nor should men stand for girls, or women for boys. If this, however, cannot be done, there should be at least two godfathers for the boys, and two godmothers for the girls." (Conc. Plen. Balt. II. l. c. n. 253.)

According to the custom of the Church, a grave obligation exists of having a spon-

sor at confirmation. However, in this country this custom does not prevail. (KENR. Mor. ii. p. 125.)

Hence the omission of a sponsor with us would not be a mortal sin. The words of the Fathers just cited convey no such obligation.

Again: The godfather places his right hand on the right shoulder of the one to be confirmed: which custom, though different from that prescribed by the pontifical, was approved by the S. C. of Rites on Sept. 20, 1749. (KENR. l. c.)

226. The statutes of the Diocese of Newark likewise enjoin this laudable practice of having separate sponsors for each candidate of confirmation.

"We desire that according to the decree of the Second Plenary Council of Baltimore, the praiseworthy usage existing in the Church of having separate sponsors for each one to be confirmed, be also introduced into our diocese." (Statuta Dioc. Novarc. cap. ii. § 10. p. 24. edit. 1869.)

227. The custom of adding the name of a saint to the one received in baptism is also recommended by these statutes. "This name should also be written on a slip

of paper, which will be given by the pastor to each of those who are to be confirmed, as a testimonial that the bearer is sufficiently prepared to receive the sacrament." (Statuta, l. c.)

This suggestion, if well attended to, saves great annoyance and delay. By presenting this slip of paper, with the name on it, the bishop is enabled to go on smoothly with the ceremonies, and things proceed without confusion.

CHAPTER XVI.

Holy Eucharist.

Vid. Conc. Plen. Balt. II. tit. v. c. iv. p. 137 seq: St. Alphons. Hom. ap. tract. xii. : Rituale Rom. De Exequiis.

§ 49. TIME OF FULFILLING PASCHAL. PRECEPT: VIOLATION.

228. The Fathers of Baltimore again promulgate the decree of the Fourth Lateran Council, to wit:

"Each of the faithful of both sexes having arrived at the years of discretion, shall faithfully confess all his sins to his pastor at least once a year, . . . receiving reverently the Holy Eucharist at least during the Easter time; otherwise in life he shall be separated from the Church, and in death, deprived of Christian burial."

229. The time within which this precept can be complied with begins on Palm Sunday and ends on Low Sunday, both included. (C. Balt. l. c.) But this time may be prolonged by necessity, custom, or privilege. In America, by special indult of

Pope Pius VIII., it extends from the first Sunday in Lent to Trinity Sunday. (L. c.)

The penalty of excommunication and privation of ecclesiastical burial annexed to the violation of this decree is not latæ sententiæ, but ferendæ sententiæ; that is, this censure is incurred only after a judicial sentence. St. Liguori thus speaks:

"By virtue of the law contained in the decree 'Omnis utriusque,' etc., a twofold punishment is inflicted on those that violate the precept of confession and communion, that of interdict namely, and of privation of ecclesiastical interment.

"But these penalties are incurred only after the sentence of the judge." (Hom. Apost. tract. xii. n. 38.)

230. It follows, consequently, that one who has infringed this precept and dies suddenly, is not to be deprived of Christian burial except on proper judicial sentence.

This case not unfrequently takes place. Thus, for instance, Titius, an adult Catholic, has neglected for twenty years his Easter duty. The fact is pretty well known among Catholic neighbors. He is stricken dead suddenly, without having a priest, or receiving the sacraments. Is Titius to be deprived of Christian burial?

We answer:

1st. If Titius dies not only without any sign of contrition, but positively refuses the sacraments or ministry of the priest, he cannot receive ecclesiastical interment.

2d. If he is called from earth so suddenly as to be unable to ask for a priest, or even manifest a sign of sorrow, but without positively refusing the sacraments, it seems better to be on the side of mercy and clemency.

231. This is clearly set forth in the Roman Ritual, De Exequiis, under the title: Iis quibus non licet dare ecclesiasticam sepulturam.

The reply is:

All those shall be deprived of Christian burial, of whom it is publicly known that they did not receive once a year, namely, at Easter, the sacraments of confession and communion, and who died without any signs of contrition.

This rubric certainly applies chiefly to such persons as die of a natural death, and who are capable of deliberation before that solemn moment. But when persons are snatched suddenly from life without being

able to express any sign of repentance, we think that the rubric does not at least primarily reach them, and that therefore they may be buried with all the rites of the Church. Doubtful cases must be referred to the bishop, who will decide what is to be done.

It is therefore a general rule that the above sinners, who die without refusing the sacraments, are entitled to the benefit of the doubt, and may receive Christian burial.

§ 50. AGE AT WHICH CHILDREN ARE BOUND BY THIS PRECEPT.

232. We pass to another point.

It has not been defined by the Church at what age children should receive first holy communion.

"It may be laid down as a general rule, which, however, is not without exceptions, that no one should receive this bread of angels before the age of ten; nor should it be refused to any one, who is otherwise disposed, after the age of fourteen." (Conc. Plen. Balt. II. l. c. n. 261. p. 141.)

In like manner, St. Alphonsus says:

"The obligation of receiving holy communion

begins ordinarily from the ninth year, and should not be deferred beyond the twelfth, or at the highest fourteenth year." (Hom. ap. tract. xii. n. 43.)

This, too, we believe is the custom in America. In German congregations there is perhaps greater uniformity on this point than among the English-speaking missions. The age at which children receive among the former is twelve: among the latter, it varies between nine and fourteen.

233. The precept of confession is obligatory on children, when they arrive at the age of discretion or have the use of reason, which is generally the age of seven.

In some German parishes in America a custom prevails by which children go to confession only when they are about to receive first holy communion, which is at the age of twelve. Accordingly, where this practice is predominant, children would not seem to be bound to observe the Lateran decree with regard to confession before that age.

Now, it is true, as the Fathers of Baltimore say:

"That it has never been defined by the Church at what age children are obliged to go to confession.

For some acquire the use of reason sooner, others later. We therefore leave this matter to the prudence and zeal of the pastor." (L. c. n. 292. p. 157.)

Again, many theologians make the age, when the obligation begins, depend entirely on the custom of a place or country. (See LACROIX, tract. x. disp. iii. n. 21; LAYMANN, lib. v. tract. iv. c. iii.)

Sotus maintains that children do not fall under this precept before the age of twelve. Valentia holds:

"That children, before the twelfth year, do not possess that discretion which obliges them to receive communion or go to confession." (Tom. 6. disp. 6. qu. 8. punct. 4.)

The common opinion, however, is to the contrary. It is customary also in the United States to send them to confession at the age of seven or eight years. This we hold to be undoubtedly the safer opinion.

Billuart says:

"The opinion of some, that children, namely, do not commit mortal sins before the twelfth year, is an error. I should, however, believe with many theologians, that they do not incur the penalty of violating this precept before the age of twelve, as the Church does not seem to include them." (BILLUART, tom. iii. dissert. v. art. ii. De Pœnit.)

One thing is clear, namely, that more discretion has always been required by the Church for communion than for confession. This, too, is in accordance with the nature of the respective sacraments. Confession is a preparation for communion, and therefore should be received at an earlier age.

§ 51. ADMINISTERING HOLY COMMUNION WITH STOLE ONLY.

234. A custom prevails in America that in administering holy communion to the sick, the priest is merely vested with the stole, and without having on a surplice under it.

This seems to be allowed by the Fathers of Baltimore:

"Never, however, except in case of extreme necessity, should priests ever touch the sacred host itself, or the vase containing it, except robed with the stole." (Conc. Plen. Balt. II. p. 143.)

In church, however, they should not extract the blessed sacrament from the tabernacle, without being vested in stole and surplice. (Ib.)

Yet St. Liguori says:

"To administer the holy eucharist without stole and surplice, doctors generally hold to be a mortal sin." (Lib. vi. n. 241.)

And the Sacred Congregation, being asked whether the practice predominant in some places of administering communion to the sick with the stole alone, "super vestem communem," and without the surplice, might be allowed, answered: "Negative et eliminata consuetudine servetur ritualis Romani præscriptum." (Apud O'KANE p. 381.)

Yet Kenrick, in speaking of the manner of giving holy communion to the sick, says:

"In administering it (to the sick), the stole at least must be used, sub gravi peccato."

Then he adds:

"But if possible, the surplice also should be worn, according to the monition of the First Council of Baltimore." (Mor. ii. tract. De Euch. p. 135.)

From this it seems clear that our great American archbishop and theologian did not interpret the aforesaid decree as strictly applying to America. Certainly he could not have been ignorant of its existence, as it had been issued as early as December 16, 1826. (In una Gandavens.)

235. It appears certain, therefore, that the Blessed Eucharist may be administered to the sick in this country with the stole only over the ordinary secular dress.

The custom of doing so may have arisen from the difficulty of carrying along a cassock on sick-calls, which ought to be worn under the surplice. Nothing indeed looks more ridiculous than to use the surplice over the ordinary civilian's dress.

If the surplice be put on, it seems equally desirous, if not obligatory, to wear the cassock. But, besides the difficulty of bringing it along, the necessity of laying aside the coat in a room filled with people, in order to vest in cassock and surplice, seems no less inconvenient. Often only one room is at the disposal of the priest. That apartment is not unfrequently the kitchen, sleeping and sitting room, all combined.

We are of opinion, therefore, that there are various weighty reasons that will explain and excuse the practice of vesting in stole only, which obtains in this country, and if not always, at least often make its observance lawful.

236. The Blessed Sacrament can be kept only at one place in each church. (Conc. Plen. Balt. II. p. 143.)

"By special indult of the Holy See, Sisters of Charity, and women of other religious communities who have charge of orphan asylums, hospitals, and other institutions (such as schools), have the privilege of keeping the Blessed Sacrament in their private chapel with a light burning before it; the key of the tabernacle must be kept by the priest." (KENR. Mor. ii. tract. xvii. § iv. p. 167.)

CHAPTER XVII.

On Penance.

See Conc. Plen. Balt. II. l. c. cap. v. p. 145 seq.: Walter, Jus Can. § 280. p. 549: Ballerini, ap. Gury, ii. p. 368.

§ 52. PUBLIC CONFESSION.—NATURE OF RESERVATION.

237. PUBLIC confession was practised during the first ages of the Church. Yet it was restricted generally to sins that were public, or at least publicly committed. Not unfrequently, however, secret crimes and sins were openly avowed. This was a voluntary confession on the part of the penitent. However, public confession soon gave rise to various abuses, and was consequently abolished under Leo I., in 459.

238. The penance imposed in those early ages was very severe. This rigor grad-

ually disappeared during the thirteenth century.

However, public penances are to a certain extent still given for public offences, in order to repair the scandal that may have been caused. At present all sacramental confession is secret, being made to the priest only, who is under the strictest obligation of inviolably preserving the secret of confession. The absolution was given, in the early days of Christianity, only after the lapse of a long penance, which lasted at times for many years. Gradually this also was changed, and the practice became prevalent of absolving penitents immediately after the oral confession, and of performing the penance afterward. This is at present the universal custom of the Church. (WALT. l. c. p. 552 seq.)

239. The Fathers of Baltimore say:

"Jurisdiction, whether ordinary or delegated, can undoubtedly be diminished and limited by the authority of the superior." (P. 149.)

This is called by moralists "reservation of cases."

Formerly it was maintained by St. Liguori, and perhaps the greater number of

theologians, that a reservation affected the confessor directly, and the penitent only indirectly; that, therefore, it took away from the confessor jurisdiction over reserved sins, even when the penitent was ignorant of the reservation.

240. This opinion has received a severe blow at the hands of Father Ballerini in his notes on Gury. He says:

"This reasoning, namely, that the reservation restricts the power of the confessor, which, by the way, is the principal argument in the case, can conclude nothing. For that the reservation is a restriction of jurisdiction, we all profess; but whether the law reserving also comprehends a sin committed in ignorance of its reservation, or through fear, as also outside the territory affected by the law, are questions which are not solved by the fact that reservation is a limitation of jurisdiction. In a few words: Because the reservation is a restriction of jurisdiction, it does not follow that the restriction itself is applicable to a given case in particular, or extends indiscriminately to all cases."

241. Again:

"The second opinion holds that every reservation is penal, and that ignorance consequently excuses from all reservations. . . . To this opinion we adhere." (SALMANTIC. apud BALLERINI, not. ad GURY, vol. ii. p. 368 seq. edit. Rom. 1869.)

This opinion, therefore, considers every reservation a punishment, which is not incurred when the offender is ignorant of the penalty attached to the commission of a sin; and this is held by most eminent theologians, such as the Salmanticenses, Lugo, Sanchez, Sporer, Ronc. (Apud BALL. l. c.)

The practical result of this reasoning would be that in very many instances the confessor could absolve penitents from reserved cases in this country; especially from such as are reserved by bishops, since the people are for the greater part ignorant of them. Yet, as Ballerini well observes, this would not render discipline lax, as the confessor should at the earliest opportunity admonish the penitent that the sin is reserved, and thus the reservation would take effect in future.

242. It is forbidden, as the Fathers of Baltimore add, under severe censures, to ask the name of the accomplice or associate in any crime. (Conc. Plen. Balt. p. 151.)

§ 53. CONFESSIONALS.

243. The following decree of previous Councils of Baltimore is renewed:

"We greatly urge all prelates to endeavor to have confessionals erected in all the public churches of these provinces; and when they have been thus set up, it shall not be lawful for any priest to hear the confessions of women in any other place, without the special permission of the ordinary.

"By the church, the sacristy is not meant, except it be situated in such a manner that it is public and open." (Conc. Plen. II. n. 294. p. 158.)

In conformity with this decree, the Statutes of the Diocese of Newark ordain:

"We forbid, under pain of suspension from hearing confessions, 'ipso facto incurrendæ,' all priests in this diocese to hear confessions of women or girls in private houses or rooms, or anywhere else outside of confessionals erected in the church, in an open place." (Stat. c. ii. § 8. p. 21.)

244. *Case.*—Titius, not thinking of this stringent law, is asked to hear confessions in a church of the above diocese.

The other confessionals are already occupied by confessors, and he is forced to sit at the altar railing, where men and women indiscriminately come to him.

At another time, he finds that the confessional has no grate, but merely an open space in the upper part: he thus hears the confessions of women, thinking that the law does not strictly comprehend these cases.

245. In reply to the first case, it seems evident that no censure was incurred, as there was no intention of violating the statute, but mere forgetfulness. It might further be asked whether Titius would have trenched upon the law by hearing confessions of women at the railing, even though he had been conscious, at the time, of the diocesan legislation. We think he would have formally infringed the statute. It is true, one might object that the primary and chief intent of the law is to enact that confessions of women should be heard in the church only; and not in any secret place, lest ground for suspicion should be given. Hence, too, it might seem that this end is sufficiently reached by the action of Titius, and that therefore the law would appear to have been complied with. Yet we do not think this to be a satisfactory reply. The Council of Baltimore and the

Statutes of Newark clearly mention "confessionals," and inhibit the hearing of women except in them.

246. But let us suppose that during the paschal season, or in a mission, when there is a great concourse of penitents, there is not a sufficient number of confessionals. Could, in that case at least, the confessions of women also under the plea of necessity, be heard in the aforesaid manner? We think this necessity can scarcely ever occur. For in such a case all the men might be heard at the altar railing, or in some other convenient place, and the confessionals could be reserved solely for the women.

If, however, the necessity alluded to should really exist, we think the law would no longer bind, as the statutes themselves provide that in such a conjuncture the bishop should be consulted if possible. Where this is impracticable, we can see no reason why the obligation should hold.

247. In regard to hearing penitents in a confessional without any grate, the same rule does not seem applicable. Confessionals may not always have the grate, as

the Statutes of Newark appear themselves to admit, for they subjoin:

"Missionaries should try as soon as possible to have a becoming grate put in their confessionals." (Stat. Dioc. Novarc. l. c.)

§ 54. JURISDICTION, ORDINARY AND DELEGATE.

248. Another case not unfrequently takes place. It is this: Sylvius, a member of a religious order, is requested by some pastor of a different diocese to assist in hearing confessions on some great festival. This he cheerfully consents to do. But lo, after Sylvius has heard a large number of penitents, and taken it for granted that the pastor had procured the necessary jurisdiction from the ordinary, he accidently finds out that the former had forgotten altogether to apply to the bishop for the necessary faculties. He is therefore greatly troubled about the matter. The pastor, however, quiets his mind, reminding him that priests of a religious community can hear confessions in any diocese without special permission; that,

moreover, in this instance, the Church supplies the defect, there being a "titulus coloratus;" that parish priests, according to Laymann and other eminent theologians, have ordinary jurisdiction over their flock, by virtue of their pastoral charge; that, therefore, they can delegate this jurisdiction to other confessors as far as their own parishioners are concerned.

249. In reply, we say:

1st. Jurisdiction being authority over such only as are subjects, the bishop of the diocese exclusively grants the right of absolving penitents residing in his diocese. Priests from other dioceses must, therefore, in all cases, obtain faculties from the ordinary of the diocese in which they wish to hear confessions.

2d. Priests belonging to religious communities are subject to the same law, according to the Breve of Innocent X., which reads thus:

"Regular priests approved for one diocese, cannot hear confessions in another diocese without the approbation of the bishop of that place."

The penitent, it is true, according to the universal custom of the Church, may go to

confession anywhere. But the confessor himself cannot hear confessions except in the diocese from whose ordinary he has been approved. Only one exception to this rule occurs, when the penitent, namely, having incurred a censure in one diocese, goes to a priest in another diocese "in fraudem reservationis," that is, with the intention of evading the law. In such a case the absolution would be invalid.

3d. A pastor in the canonical sense of the term has ordinary jurisdiction "in foro interno" over his parishioners. And hence, if we mistake not, he might, theoretically speaking, communicate it to priests coming from other dioceses, when they are approved. Yet practically, even in Europe, this power has been greatly restricted by the Council of Trent, as we shall see. In America there are no canonically constituted pastors, and consequently their jurisdiction is not ordinary, but merely delegated. Hence they have no power of delegating others. All priests, therefore, from other dioceses, must have permission from the ordinary of the place, in order to hear confessions.

4th. As regards the "titulus coloratus," there was no such title in the case, as Sylvius never really obtained jurisdiction. There was merely a "titulus existimatus;" the faithful being under the impression that all was right. Now, if but one or two confessions had been heard, the Church would not supply the defect, for she does this only when the error is general. But if there were more than a dozen, we think that the Church would supply. (Vid. GURY, ii. p. 346, edit. Baller. 1869.)

Finally, parish priests could formerly confer jurisdiction upon such priests as had been approved by the bishop. But after the Council of Trent, jurisdiction and approbation have become synonymous, being always conferred simultaneously by the bishop. And hence, even in Europe, pastors no longer confer jurisdiction on other priests, even over their own flock.

250. Some writers affirm that a "pastor" may call any "parish priest" of another diocese to hear confessions in his parish, without obtaining the approbation of the bishop, as the parochial benefice gives universal jurisdiction; others, with St. Liguori,

deny this. Benedict XIV. admits that in places where the practice of doing so exists, the affirmative opinion practically obtains.

We conclude, then, in the words of Innocent XII., A. D. 1700:

"That confessors, whether regular or secular, whoever they may be, can in no sense hear penitents without the approbation of the bishop of the place in which the penitents approach this sacrament."

CHAPTER XVIII.

Indulgences.

See Conc. Plen. Balt. II. De Indulg. p. 158 seq. : Benedict XIV. tom. x. Instit. xlviii. edit. Prati, 1846.

§ 55. CAN BISHOPS GRANT INDULGENCES?

251. St. Thomas holds that bishops have no power of granting indulgences "jure divino," it being an act of jurisdiction, which they receive directly from the Pope. (Summa, pars iii. suppl. quæst. xxvi. art. iii.)

By virtue of a decree of the Ecumenical Council of the Lateran, held under Innocent III., bishops may grant an indulgence of one year at the dedication, but not mere blessing of a church. Moreover, they can impart an indulgence of forty days for any other just reason.

252. *Case* 1.—During a mission that was given by some priests of a religious

community, the bishop was requested to grant an indulgence of three hundred days to all who frequented the mission, receiving the sacraments and complying with the usual conditions. The bishop replied that he doubted whether he could do so; but would consult some canonist. We ask, therefore, can the bishop grant an indulgence of three hundred days?

The answer is not difficult. Ordinarily the bishop has the power of granting an indulgence of forty days, and no more, except in the case specified. He may, however, obtain by special indult from the Holy See an extension of this power. As this does not seem to have been the case, the bishop could not give an indulgence of three hundred days. (Cf. LAYMANN, tract. vii. c. iv.)

Of course an indulgence of forty days could have been granted, as a mission may be considered a just cause for it.

§ 56. INDULGENCES OF FORTY HOURS' DEVOTION.

253. *Case* 2.—Cornelius, pastor of a large congregation, is about to celebrate the Forty Hours' Devotion in his parish.

It is to begin at the high mass on Sunday. He announces to his people on the preceding Sunday, that by approaching the sacraments of penance and holy eucharist, and by complying with the other conditions prescribed, they will receive a plenary indulgence. On the following Saturday, a great number of penitents come to confession in order to gain the indulgence. Many ask him whether they can obtain it by receiving holy communion at the first mass, which is celebrated several hours before that of the exposition. He replies in the affirmative, as they would thus receive morally during the exposition. But Pomponius, another pastor, hearing of this, absolutely contradicts the assertion of Cornelius, arguing that holy communion is one of the essential works of the Forty Hours, and must, therefore, be received within the time of its actual duration.

254. *Solution.*—It would seem that the reasoning of Pomponius is not correct. The condition we speak of is thus expressed: Ut iis vero qui confessi et sacra communione refecti, Ecclesiam visitaverint in qua Sacra Eucharistia exposita est. (Conc. Plen. II. Balt. p. 196.)

Now it would appear to us from this that the chief scope of the Devotion of the Forty Hours is not to receive holy communion, but rather to offer up during the exposition prayers and adoration before the Blessed Sacrament, and thus to kindle anew, in the hearts of the faithful, faith and devotion to this ineffable mystery of love. Hence too, one of the necessary conditions of gaining the indulgences is to visit the church in which the devotion takes place, once a day during the exposition. Therefore, perpetual adoration of the Blessed Eucharist is evidently the principal object of this devotion. Holy communion is but a necessary condition to place the soul in a state of grace, to render it capable of receiving the indulgence.

255. Again: Time, in these things, is computed, as Benedict XIV. well observes, not mathematically, but morally. Now, no one will deny that the Forty Hours' Devotion begins morally on Sunday morning at the first mass.

Besides, custom thus interprets the law in this country.

Another moral connection between holy

communion in the case and the exposition results from the intention, by which holy communion is received with the view of gaining the indulgence of the Devotion.

256. Benedict XIV. (tom. x. Institut. qu. xlviii.) gives a similar case, and decides it according to the principles just touched upon. A custom prevails in Rome of celebrating a high mass on the first day of each month in the basilica of St. Peter. Whosoever assists at it, and receives the sacraments of penance and holy eucharist, gains a plenary indulgence.

As the mass is said early, there are many who cannot "receive" at it. Hence, Benedict XIV. asks whether one would still gain the indulgence by receiving these sacraments at any time during the same day. Benedict XIV. answers in the affirmative, for the very reason that time is not computed mathematically, and that the sacraments are received "intuitu indulgentiæ lucrandæ," and because, moreover, favors should not be strictly interpreted.

We may add that this great pontiff seems to suppose that holy communion may be received before the mass in question, on

account of the words "contritis et communione refectis," which appear to indicate that these conditions are more profitably placed before any other work.

257. The reasoning in the case of Benedict XIV., we think, applies with equal cogency to our question.

We feel sure, then, that by going to confession on Saturday, and receiving holy communion on Sunday at the mass preceding the exposition, the indulgence of the Forty Hours' Devotion is gained. Nay, we think this to be more in conformity with the mind of the Church, and of greater spiritual benefit to the recipient.

Then, too, all the conditions of the indulgence would be complied with in the state of grace. And although theologians maintain that it is sufficient for the faithful to be in the state of grace when the last work prescribed is fulfilled, yet no one will deny that it is better to do them all in the state of grace.

258. That the chief object of this devotion is the adoration of the Blessed Sacrament, is well expressed thus:

"Pope Clement VIII., in his constitution 'Graves

et diuturnæ' (Nov. 25, 1592), seeking a heavenly remedy for the public calamities of the Church, ordained that this devotion of the forty hours, beginning from the first Sunday of Advent, on which day it would be celebrated every year in the chapel of the Apostolic Palace, should proceed from one church of the city of Rome to another successively, so that through the whole course of the year the faithful should be able to visit somewhere their Lord in the most holy Sacrament exposed to public veneration, and should embrace the occasion of pouring forth their prayers night and day before Him, and of craving His mercy in their necessities." (Ap. Statut. Novarc. Dioc. p. 74.)

CHAPTER XIX.

Extreme Unction.

Conc. Plen. Balt. II. l. c. p. 161. c. vii.: O'Kane, Notes, p. 406. 413. 415. 425: Walter, Jus Can. lib. vii. cap. v. § 319. p. 636.

§ 57. SUBJECT OF THIS SACRAMENT: WHEN IT MAY BE REPEATED.

259. With regard to the subject or recipient of Extreme Unction, we quote from O'Kane as follows:

"Extreme Unction is to be administered only to those who are in danger of death from disease already affecting the body." (O'Kane, Notes, p. 415, n. 859.)

Again:

"It is enough, however, that a person is prudently judged, from the apparent symptoms, to be in danger, even though the danger does not really exist. This appears to be conveyed in the present rubric, which requires only that one be so ill 'ut mortis periculum imminere videatur.'" (O'Kane, ib.)

"As soon, then, as it can be prudently pronounced that one is in danger of death from sickness, even though the danger be not proximate, even though

there be a hope of recovery, the sacrament may be administered." (O'KANE, ib.)

"Benedict XIV. lays it down as a rule, that when children are considered capable of receiving the sacrament of penance, they may also be considered capable of receiving extreme unction." (O'KANE, Notes, p. 415, 416.)

260. Again, it is asked, how often may this sacrament be repeated?

In answer to this question, we quote from the same author:

"It is the doctrine taught by St. Thomas, and after him by all theologians, viz. that in the same sickness, and whilst the same danger of death continues, the sacrament cannot be administered a second time (according to many, not even validly); but that it may be repeated as often as a person, having recovered from the danger, again falls into it, even during the same sickness." (O'KANE, Notes, n. 878, p. 425.)

The trouble is, at times, how to know whether a person has so far recovered that it should be again administered in case of relapse. "In a short sickness, the recovery is either complete or merely apparent." (Ib.) In an illness of long duration, such as consumption or the dropsy, changes for the better frequently take place. In one of these changes, a person in manifest

danger of death at present, may be over this danger in a few days, and be tolerably well for several weeks or months, although it is known that the disease still continues (as in consumption), and is even likely to end fatally. In such a case, when the disease takes another turn, and the person is again in similar danger, extreme unction may be again administered; for though the disease is the same, the "state" of the disease is different. (O'KANE, l. c. p. 426.)

261. The practice of giving extreme unction monthly, is thus referred to:

"It is the practice of some, in all cases of tedious illness, to repeat extreme unction after the interval of a month. It would be hard to reconcile this practice with the rubric and the words of St. Liguori above cited, when it is certain that the same danger has continued all the time. But it often happens that, all things considered, there is a doubt whether the state of the disease has really changed, whether the danger has at any time ceased, or has all along continued; and in this case of doubt the priest is recommended to administer the sacrament again, as more in accordance with the ancient practice of the Church. (Ib. p. 427.) Now it may be contended that there is, generally speaking, ground for such a doubt in the case of any one who lives a month after receiving extreme unction, and is still in danger of death;

and that therefore, in a tedious illness, the sacrament should, as general rule, be repeated after the lapse of a month." (P. 427, O'KANE.)

These suggestions we have thought opportune to transcribe from the excellent work quoted above.

262. Yet it must be borne in mind that whenever it is certain that no change has occurred in the disease, it would be wrong to repeat the unction monthly. Thus the author quoted says:

"But a mere continuance of life, no matter how long, does not of itself justify the administration of the sacrament a second time. All theologians seem to be agreed that a recovery of some kind is required." (O'KANE, p. 426.)

263. The oil used in extreme unction must be blessed by the bishop according to the usage of the Latin Church. In the Greek Church, bishops consecrate holy oil on Thursday of Holy Week; and with it all who are present at the ceremony are anointed; while the oil used immediately for extreme unction is blessed by simple priests. (WALT. l. c. p. 637.)

CHAPTER XX.

Holy Orders.

Conc. Plen. Balt. II. l. c. cap. viii. p. 165: Soglia, J. Can. lib. i. c. vi. § 53. tom. ii. p. 95: Kenrick, Mor. tom. ii. tract. xx. De Ordine, 269 seq.: Walter, Kirchenrecht, lib. v. § 204. p. 405: Conc. Trid. sess. xxiii. chap. iii. and iv.

§ 58. HIERARCHY: EXAMINATION FOR ORDERS.

264. "HOLY ORDER imprints an indelible character on the soul, by which the one upon whom hands are imposed is forever set apart and distinguished from the laity." (Conc. Plen. Balt. II. n. 313.)

Protestants, including the great majority of Episcopalians, deny that clerics are divinely ordained or set apart for the ministry. They would have them to be merely deputed by the lay congregation, absolutely rejecting any specific distinction between either. (WALT. l. c. p. 398.)

The Council of Trent says:

"But forasmuch as in the sacrament of order, as also in baptism and confirmation, a character is imprinted, which can neither be effaced or taken away; the Holy Synod with reason condemns the opinion of those who assert that the priests of the New Testament have only a temporary power; and that those who have once been rightly ordained, can again become laymen, if they do not exercise the ministry of the word of God. And if any one affirm that all Christians indiscriminately are priests of the New Testament, or that they are all mutually endowed with an equal spiritual power, he clearly does nothing but confound ecclesiastical hierarchy, which is an army set in array." (Sess. xxiii. c. iv.)

265. Against the Protestant theory, which vests the power of ordination in the laity, the Holy Council thus speaks:

"Furthermore, the sacred and holy Synod teaches that in the ordination of bishops, priests, and of the other orders, neither the consent, nor vocation, nor authority, whether of the people or of any civil power or magistrate whatsoever, is required in such wise as that, without this, the ordination is invalid; yea, rather doth it decree, that all those who being only called and instituted by the people, or by the civil power and magistrate ascend to the exercise of these ministrations, and those who of their own rashness assume them to themselves, are not ministers of the Church, but are to be looked upon as thieves and robbers, who have not entered by the door." (Sess. xxiii. c. iv.)

266. Again, the Council of Baltimore says:

"In order that any one may be raised from the priesthood to the episcopate, the authority of the Holy See alone is required." (L. c. n. 315.)

It has already been demonstrated in the election of bishops, that the Apostolic See alone appoints bishops all over the world, that the manner of proposing candidates for the episcopal office differs in the various countries. In European States where ecclesiastical law is established, the cathedral chapter, composed of the oldest and most respected priests of the diocese, nominates the bishop; while the Holy See exercises the right of confirming the nomination.

In America, the bishops of the province select three candidates, whose names are sent to Rome; from their number the Holy See generally selects the future bishop. But it may reject all the nominees, and appoint some one not proposed at all. In fact, this has several times occurred.

267. The Fathers of Baltimore continue:

"We desire that in each diocese of these States, four, or at least three examiners be hereafter appointed by the bishop, who, having examined the candidates

for holy orders, . . . and being thus well informed on the matter, shall sincerely and truthfully report all to the bishop, and give their written opinion in regard to each of the candidates, whether he be worthy or unworthy of being admitted to orders. The same examination in regard to knowledge must be made by regulars who are presented for ordination." (Conc. Plen. Balt. l. c. n. 316.)

This would seem to be a most excellent and necessary law. But we fear that it is but rarely carried out in the proper manner. It will avail but little to select as examiners those who have made but an ordinary course of theology, and whose parochial charge does not allow them to devote their time to it. Nor will it be of greater use to invite one or two personal friends of the rector of the seminary for that purpose. Such evidently is not the intention of the Fathers of Baltimore. They clearly mean that the bishop, not the rector of the seminary, should select the examiners, or rather that the priests assembled in diocesan synod should propose them: otherwise it is likely that the examination will be but an empty form. And yet, is it not frequently a mere show in some of our seminaries?

268. Moreover, would it not be wise to

extend these examinations to the appointment of pastors? Would it not be more in accordance with the entire discipline of the Church, to confer the more honorable parochial charges upon those who have successfully passed through their examination before the bishop and three or four examiners?

Bishops, we are quite aware, are generally animated with a full sense of justice in this respect. But are they not liable to being misinformed?

Will not the clergy of a diocese be inclined to wire-pulling, suspicion, and discontent, when they see excellent places bestowed sometimes by the bishop on priests who, if examined in the rudiments of moral theology, would perhaps break down?

§ 59. TITLE OF ORDINATION.

269. The Fathers of Baltimore continue:

"Priests cannot be ordained without a title, whether of patrimony, or benefice, or of religious poverty." (P. 170.).

The word "title" is synonymous with that of "church." In the first ages,

churches were simply called titles. This custom very likely had its origin in the fact that churches were erected in honor of some saint, or mystery, the title of which was the name of the church. (KENR. l. c. p. 276.)

Now each ecclesiastic was attached to some church, where he discharged various duties. Hence the title of ordination means the church or office for which a cleric is ordained. This service also gave the right to a livelihood. Hence the word title also means the right of receiving a becoming and honorable support from the church to which an ecclesiastic is attached, on account of services rendered. As the Church is exceedingly anxious to maintain the proper decorum of the sacerdotal state, and prevent priests from being exposed to penury and beggary, she ordains that no cleric shall be promoted to holy orders without being possessed of an honorable means of livelihood.

This right, however, may be forfeited by criminal conduct. No bishop is obliged to support a priest whom he has been compelled to suspend on account of bad behavior. But with the exception of this

case, the right of support remains intact. Sick priests are entitled to a living from the congregation they had been attending, or from the bishop. (C. Pl. Balt. II. n. 90.)

270. There are six titles:

1st. Title of benefice—"Titulus beneficii." Where benefices are regularly established, the incumbent acquires the right of permanent support from them.

2d. The title of patrimony comprises the effects and property of the parents of an ecclesiastic. These must be made up of immovable goods, or at least well secured, permanent, and sufficient for a decent support. In Europe, where a great many are ordained under this title, the sum of the annual income is fixed, and varies slightly, according to the cheaper or dearer rate of living of the several countries.

3d. Title of table—"Titulus mensæ"—when some benefactor, city, or State takes upon itself the support of an ecclesiastic.

4th. Title of common table—"Titulus mensæ communis"—which takes place when, by special privilege of the Holy See, one is ordained who is a member of a community not bound by the vow of

poverty. Such, for instance, is the case with the Paulists, Lazarists, and kindred congregations.

5th. Title of religious poverty—"Titulus paupertatis." This applies to members of a religious community bound by the solemn vow of poverty, who are supported by the possessions of the entire community.

6th. Title of missions—"Titulus missionis"—which is peculiar to America, Australia, and all non-Catholic countries that are not yet regulated according to the canonical status of the Church, where, moreover, churches do not possess permanent funds sufficient for the support of pastors.

271. In order that this title of missions be valid, it is necessary,

1st. That an ecclesiastic thus to be ordained should promise to serve on the missions perpetually. (Cf. Decr. S. Prop. Trid. 24th Jan. 1868.)

2d. That he remain constantly in the diocese for which he was ordained. Of course he may pass to another diocese with the permission of the ordinary, and

there acquire the same rights as were possessed by him in the first diocese.

This oath of perpetually serving on the missions is absolutely necessary, and was insisted upon, although the Fathers of Baltimore requested the Holy See to dispense with it. (C. Plen. Balt. p. 170; Decr. ii. De Ordinat. Tit. Miss. p. cxlvii.)

272. From the various answers of the Holy See on this point, it is evident that it desires this title to be abolished gradually, and replaced by the normal one either of benefice or patrimony.

And as the latter is inseparably connected with the establishment of canonical parishes and pastors, the intention and desire of Rome seems to be that the normal discipline of the Church should be introduced as soon as possible in this country.

CHAPTER XXI.

On Matrimony.

See Conc. Plen. Balt. II. tit. v. c. ix. p. 170: Walter, Kirchenrecht, lib. vii. cap. iv. § 288 seq. p. 567: Soglia, Jus Eccl. lib. ii. cap. vi. vol. ii. p. 295 seq.: Conc. Trid. sess. xxiv. can. v. vii.: Bened. XIV. De Synod. Dioc. lib. ix. cap. ix.: Blackstone's Comment. bk. i. ch. xv.

§ 60. INDISSOLUBILITY OF MARRIAGE.

273. THE Fathers of Baltimore declare it to be the doctrine of the Church that the sacrament of matrimony is wholly indissoluble; that the principles of "free love" are condemned alike by natural as well as supernatural law; that the opinion entertained by no small number even of Catholics, to wit, that the bond of marriage can be dissolved quoad vinculum, that is, absolutely, by the authority of the civil tribunal, in granting a divorce, by which parties would be entitled to contract a new alliance, is a wicked error: further, that

when a husband has been in the war and nothing heard of him since, yet the wife cannot marry again without having previously ascertained with some degree of moral certainty the death of her former husband.

Furthermore, the proclamation of the banns is more strictly insisted upon by the Fathers; mixed marriages are strongly censured, and such as are contracted before a Protestant minister severely prohibited.

Finally, the fact is reaffirmed that in the United States the decree of the Council of Trent on clandestine marriages is not promulgated, and that our circumstances are such as to induce the Fathers to think its promulgation inopportune for the present; that accordingly the Holy See be requested to sanction the existing discipline, and extend it throughout the whole country, except New Orleans. (Conc. Plen. Balt. II. n. 324–330, p. 170 seq.)

We shall briefly treat of each of these points. The nature of this sacrament is sufficiently set forth in dogmatic and moral theology. Canon law explains its disciplinary character.

§ 61. HISTORY OF ECCLESIASTICAL LEGISLATION ON MARRIAGE.

274. We ask, has the Church any right to make laws regarding marriage? Protestants generally deny that it is a sacrament, and reduce it to a mere contract. (Apolog. Aug. Conf. art. vii. De Numero et Usu Sacramentor.) Hence they subject it to the civil power. The Catholic Church, on the contrary, holds marriage to be a sacrament, and consequently claims the right of regulating its matter and form. (Conc. Trid. sess. xxiv. can. xii.)

The canon reads as follows:

"If any one saith, that matrimonial causes do not belong to ecclesiastical judges; let him be anathema."

The history of ecclesiastical laws on marriage exhibits variations of considerable moment. Until the fifth century, but little change was made in secular legislation on matrimony, which was still pervaded by pagan ideas. The Church was obliged gradually to unfold her doctrine, and she succeeded but slowly in practically imbuing with her spirit the minds both of the

Romans and barbarians whom she had converted.

275. St. Augustine was the first who fully expounded the nature and indissoluble character of this sacrament. When the Germans became converted, the Church asserted her full rights on this point, and her laws were enforced by the civil authorities. This state of things continued to remain in existence in Catholic countries, with some slight variations, up to the present century.

But, to use the words of the illustrious Archbishop of Westminster:

"At this time there is no civil power, as such, either Catholic or Christian: there is no nation, in its organized and public life and laws, professing Christianity. The tendency of all political and social movements is to the exclusion of Christianity from the public life of nations." (Sermons on Eccl. Subjects, by H. E. MANNING, etc., vol. iii. Introd. p. xcvi.)

Hence, Governments have arrogated to themselves the power of exclusively making laws and prescribing the conditions of the matrimonial contract. In Italy and France, civil marriage is necessary to obtain a legal recognition of wedlock. In Prussia the same is now being attempted

by the Liberal majority of the "Reichstag." We need hardly add that this bad example is now followed by almost all the Governments of the world.

In the Greek and Russian Churches, canon law was incorporated into the civil law, the emperors becoming the final judges of disputed points. (WALT. p. 568.)

Outside the Catholic Church, marriage is more and more coming to be considered a mere civil and social contract, that can be rescinded like any other; hence the great number of absolute divorces may easily be explained.

276. It may be asked, what laws has the Church enacted at various times concerning this sacramental contract? Where her legislation was not recognized by civil law, she endeavored as far as possible to conform to the latter. This prudence and moderation she employed in order to avoid unnecessary conflicts with the secular power.

In general, the faithful were obliged to abide by the rules of the Church with regard to impediments. The mutual consent of the contracting parties was always

considered essential, and the Church declared every marriage valid where this consent was not invalidated by any ecclesiastical impediment, even though all external solemnities or formalities had been disregarded, and the laws established by secular rulers neglected. (WALT. Jus Can. p. 573.)

277. The presence of witnesses and the sacerdotal benediction were prescribed as conditions of licitness only, not of validity of this sacrament. As a result of this, it was soon found difficult to distinguish between a true marriage and mere concubinage. This is but too true of many marriages in America. To obviate this difficulty, the Council of Trent ordained as follows:

1. That three proclamations should precede the marriage: they are to be made on three consecutive Sundays or festivals of obligation.

2. That the marriage be contracted before the parish priest and at least two witnesses. (See Conc. Trid. sess. xxiv. cap. i. De Ref.)

The transgression of the first of these enactments makes marriage illicit; a violation of the second renders it invalid.

§ 62. DIVORCE IN GENERAL: CIVIL DIVORCE.

278. We proceed to the next question, that of divorce. The Fathers of Baltimore say:

"It is to be sincerely regretted that the opinion has taken hold on the minds of many of our Catholic people, to wit, that the bond of matrimony can be totally severed by authority of the civil law, in such a manner as to allow those who are thus separated to enter upon a new alliance." (Conc. Plen. Balt. II. n. 326. p. 171.)

This opinion, the fathers, in accordance with Christ's words, and the reiterated condemnations of the Roman pontiffs, absolutely condemn, reminding the faithful in the United States of a former decree, which admonishes bishops to prohibit, under pain of excommunication to be incurred ipso facto, any one from marrying again, on obtaining a civil divorce.

279. The law of the Church is exceedingly explicit on this point. No absolute divorce or dissolution of marriage is ever allowed, when once it has been validly contracted and consummated.

The same holds good of all baptized persons, whether Catholic or sectarian. This doctrine was clearly maintained already by Tertullian († 215), Origen († 234), St. Cyprian († 258), and by all the early councils. (See WALT. Jus. Can. p. 622.)

A divorce, however, from bed and board (a mensa et thoro), is granted by the Church for several reasons, such as adultery, continued ill treatment, and for other grave causes. (WALT. l. c. p. 624.)

280. Civil law in this country, as elsewhere, differs materially on this head from canon law. It distinguishes two kinds of divorces, viz. an absolute and a partial divorce. Divorce itself is defined in general to be:

"A dissolution of the bond of matrimony, or the separation of husband and wife, by the judgment of a court having jurisdiction thereof, or by an act of the legislature." (CROSBY, p. 225.)

Again, continues this author:

"Divorces are of two kinds, a vinculo matrimonii—from the bond of matrimony, which dissolves and totally severs the marriage tie; and a mensa et thoro—from bed and board—which merely separates the parties." (Ib.)

Furthermore, he says:

"If no constitutional provision prohibits, divorces from the bond of matrimony are granted by the various State legislatures for causes by them deemed sufficient; and they are also granted, except in Maryland, by the court to which such jurisdiction is given." (Ib.)

Accordingly, the causes for which absolute divorces are granted, though differing in the several States, may be said chiefly to be adultery, imprisonment for some years on account of crimes, neglect to provide a decent support for the wife.

281. Blackstone holds the same views, namely, that divorce is total, a vinculo matrimonii, or partial, a mensa et thoro. He remarks "that the canon law (which in this case our common law follows), will not permit the nuptial tie to be unloosed for any cause whatever." (See BLACKST. Comment. bk. i. ch. 15.)

The same author says:

"The civil law allows many causes of absolute divorce, among which adultery is with reason named as the first and principal." (Ib.)

282. It is scarcely necessary to add that in America the number of absolute divorces

granted for comparatively insignificant and frivolous reasons is almost appalling. The sanctity of the matrimonial alliance is fast disappearing, and in its stead a mere human contract is being placed, the stability of which depends on the will or caprice of the parties.

Whence comes this state of affairs? The first and chief cause lies with governments. They have overstepped the boundaries of their legitimate jurisdiction, and have encroached on the power of the Church. They have eliminated from marriage the supernatural and divine element, and substituted in its stead a mere human contract, subject to secular jurisdiction. Hence, they have arrogated to themselves the power of determining the conditions of the matrimonial consent.

But no less a share of blame attaches to nations themselves. In a great measure have they thrown off the mild and sweet yoke of the Church; they have excluded from their social life the author of its existence and permanency. Why wonder, then, at hearing the cry of social democracy and radical communism: "Down

with marriage: let us have wives in common."

283. The civil power not only trespasses upon the authority of the Church, but is, moreover, opposed to the revealed as well as the natural law. One of the condemned propositions of the Syllabus of 1864 was:

"The bond of marriage is not indissoluble by the law of nature; and in various cases absolute divorces may be sanctioned by the civil authority." (Prop. 67.)

Natural law demands this indissolubility in order to insure the preservation and education of the offspring. The revealed law has been laid down in Holy Writ, and admits of no exception whatever to this sacred character of the matrimonial alliance. (See Matth. ix.; also KENR. Theol. Dogmat. vol. iii. tract. xviii. c. vi. p. 390; KENR. Theol. Mor. vol. ii. tract. xxi. c. iv.)

§ 63. MAY CATHOLICS IN AMERICA APPLY TO THE CIVIL AUTHORITY FOR DIVORCES?

284. Kenrick here alludes to a question of no ordinary practical importance. It is this: May Catholics ever have recourse to

the civil authority to obtain an absolute or partial divorce?

No Catholic can recognize the power of granting divorce to be inherent in the secular magistrate; nor can he on that account pursue any course of action that might lead to such a recognition. Hence it would seem that he cannot in any instance sue for divorce.

Yet it must be admitted that exceptions to this rule will occur. Let us, for example, suppose a case where the marriage is null by reason of an impediment. We may, moreover, imagine the parties to refuse to renew their consent or to cohabit. Separation then becomes necessary. Yet if they separate without due legal form, by obtaining a civil divorce, and yet marry again, they may be punished as bigamists or adulterers, though their second marriage is contracted in accordance with the laws of the Church, and is considered valid by her.

285. A similar case was decided by the Sacred Congregation of the Inquisition, Sept. 9th, 1824. It related to the marriage of two non-baptized persons: one became

converted, while the other remained an infidel and was unwilling to allow the converted party the free exercise of religion.

This marriage became null by virtue of custom and positive ecclesiastical law, as Innocent III. declares. (See KENR. Theol. Dogmat. vol. iii. p. 389.)

But as civil law does not recognize this hindrance, a second union by either party could be punished according to the civil code. Hence a conflict must thus arise between Church and State.

In answer to this difficulty, the Sacred Congregation said, that the baptized party should obtain a civil divorce before proceeding to another alliance, not by that means recognizing the doctrine of civil divorce, but simply using the law as a protection against unjust vexations and legal penalties.

286. When a marriage, however, is valid, and yet a separation from bed and board becomes necessary, in order to prevent the husband, for instance, from paying debts of his wife, would it be lawful in that case to apply to the civil courts for an absolute divorce, if this result could not be achieved by a partial divorce?

We think with Kenrick that it could be done. Not that there could be any real intention of absolutely severing the bond of marriage, which is supposed to be firm and valid; since the parties only make use of the law in order to obtain exemption from unjust burdens. Kenrick says:

"In these cases, it seems justifiable to seek divorce in the civil court, not thereby recognizing any such power in these tribunals, or intending actually to dissolve the bond, but merely to escape unjust annoyances and demands." (Mor. vol. ii. tract. xxi. cap. iv.)

For the same reasons, it is evidently allowed to procure a civil divorce from bed and board.

Again, our American theologian tells us:

"The law requires that persons legally divorced should renew their consent before cohabiting again. Catholics whose marriage was valid before the divorce, cannot of course renew their consent. But they may use the words necessary to satisfy the requirements of the law, without, however, intending actually to renew their consent, as it is the sacramental form." (KENR. l. c.)

287. A Catholic, then, may apply for a civil divorce, under the conditions above mentioned, in these cases:

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1st. He may sue for an absolute divorce when the marriage is invalid by reason of an ecclesiastical impediment.

2d. When the marriage is not invalid, but when grave reasons nevertheless demand a separation, a partial divorce may be sought for. If the latter should prove insufficient to shield parties from unjust annoyances, it is justifiable to procure an absolute divorce.

§ 64. IS A SECOND MARRIAGE ALLOWABLE, WHEN THERE IS DOUBT OF THE DEATH OF THE FIRST PARTY?

288. Passing to the next question, we ask, what is to be done, when a husband, having enlisted in the army during the late war of the Union, does not return with his regiment, and there is consequently reason to believe that he was killed.

Or again, strangers, especially among the poorer classes with whom the parish priest is not acquainted, frequently wish to be united in holy matrimony by him.

289. Now, it may be asked, must the pastor always possess absolute certainty

of the death of the former husband or wife, before allowing the above applicants to marry again?

We think not. In fact, this would simply be impossible in many cases. But neither is long absence, nor a vague rumor of the death of the former spouse, sufficient to contract a second marriage. Theologians require at least a moral certainty of the demise. This is attained in the following manner:

1st. By an authentic instrument of the death of the husband, signed by the rector of the hospital in which he died, or also by the general in whose regiment deceased had served.

2d. If this cannot be procured, the testimony of trustworthy witnesses may be admitted.

3d. A universal report or hearsay of the demise may also be taken into consideration.

4th. The bishop shall decide, in each case, whether the proofs are sufficient or not. (See Instruct. Congr. S. Officii, June 12, 1822, apud Conc. Plen. Balt. II. p. 172.)

Thus the Council of Baltimore says:

"It is evident, therefore, that before a second marriage can be licitly contracted, an incontrovertible certainty of the death of the first party is requisite." (P. 173.)

290. We subjoin a case, which not unfrequently happens.

Placidia comes to confession to Helvidius, and tells him that about twenty years ago, she came to this country from old Ireland, with Patrick, her husband, who, however, soon left her, and cohabited with another woman; that she then, out of mere spite, married another man, a member of some Protestant persuasion: that this attempted alliance was blessed by a Catholic priest, from whom Placidia carefully concealed the fact that she was already the wife of another man. Nor was her new Protestant husband at all troubled about the matter, though she told him this fact before the marriage.

He laughed at the idea of marriage being indissoluble, and informed Placidia that this was but a notion of the Romish creed, and that it was perfectly natural and right to follow one's instincts in these matters.

For a little while she allowed her conscience to be lulled asleep by these ideas of an over-enlightened age. A period of eighteen years meanwhile elapsed. Several children were the offspring of the unlawful union.

The former husband of Placidia had returned during this time, and was willing to live with her again; but finding her cohabiting with her paramour, he went away, giving her no further trouble. Since then, nothing has been heard of him.

At length, Placidia's conscience is roused from its lethargy, and she determines to change her life. For this purpose she now wishes to confess her sins. What is Helvidius, the confessor, to do in this case?

291. Before answering, we premise:

1st. A moral certainty of the death of the husband is required in order to allow Placidia to marry her paramour. Now, in what does this moral certainty consist? Kenrick thus explains it:

"A certainty of the death of the first husband or wife, is necessary to marry a second time. A moral

certainty, however, but not a mere probability, is sufficient. Now, trustworthy attestations, or also other circumstances in the case, may constitute a moral certainty. Thus, if a husband, having enlisted in the army, does not return from the war with the remainder of his regiment, it may be considered as morally certain that he was killed, though his body was not particularly recognized among those that were slain. Such evidences, however, as are taken from a long-continued absence and silence; from bad habits and morals, calculated to hasten death; from poor health, or from a disease prevailing in a place where the person was known to have resided at the time; or from similar occurrences, can afford but probable conjectures, insufficient for a second marriage, though the civil law should favor it; for as the Sacred Congregation replied in 1822, death is not to be presumed from the lapse of some years, but must be proven." (KENR. Mor. vol. ii. p. 324.)

We premise secondly, quoting again from the same author:

"An attempted marriage, when consummated during the lifetime of the legitimate husband or wife, constitutes the impediment of crime, if both parties are aware of the first marriage." (KENR. Theol. Dogmat. vol. iii. p. 400; also Theol. Mor. vol. ii. p. 320.)

292. Applying these two tests to our case, we find that Placidia has no moral certainty of the death of her former hus-

band, as his long absence constitutes but a probable conjecture.

We find, moreover, that she has contracted the impediment of crime, by attempting marriage before the priest, both parties full well knowing the existence of the former wedlock. Hence it follows:

1st. That she cannot cohabit with her paramour.

2dly. That, even though it were certainly known that her first husband had died, she could not marry the guilty lover, without previously obtaining a dispensation from the impediment of crime.

293. But, it may be asked, must they separate at once, and thus expose their children to infamy?

If their illicit cohabitation be known in the neighborhood, their children will hardly be disgraced by the public repentance and conversion of the parents.

Should, however, the affair be a secret, we think that they may be permitted to live in the same house, due precaution being used, provided they can do so continently, until some reliable information is obtained of the first husband.

Placidia would, meanwhile, be obliged to seek for all possible information. If by these means she should acquire a moral certainty of the death of her first husband, she might then apply for a dispensation from the impediment of "crime," which though usually granted only with difficulty, would no doubt be given on account of the children.

294. It may be observed, however, that it is a very rare occurrence that such parties should live under the same roof in a chaste manner. Nor do such circumstances remain secret for any length of time. Hence separation will sometimes have to be insisted upon.

§ 65. CIVIL LEGISLATION IN THE UNITED STATES ON MARRIAGE.

295. The power of constituting impediments belongs exclusively to the Church. (Conc. Trid. sess. xxiv.) Kenrick very aptly says:

"It seems to us that such is the nature of matrimony, that in no respect is it subject to the civil power, as far as the essence of the contract itself is

concerned. The civil government may, however, establish certain conditions upon which the civil rights of wedlock shall depend, so that no marriage or offspring shall be considered legitimate if the prescriptions of the law be neglected. For it appears to be necessary for the sake of social order, and for an equitable and just distribution of rights and duties, that it should be possible to recognize and prove a marriage in regard to its civil capacity and effects." (KENR. Theol. Dogmat. tom. iii. p. 391.)

This is primarily said of the marriages of infidels; but, as is evident, applies with no less cogency to those of Christians.

296. The relations of Church and State in this matter are thus explained by the same author:

"With us (in America), no controversy exists in regard to the power of the Church; for the simple reason that it is restricted "intra forum internum," that is, has no force in law, as our civil tribunals do not recognize the laws of the Church, which, however, fully obtain in conscience. When marriages are declared null and void by our civil law, this must be understood of the civil effects; for it is not the intention of the lawgivers to decide anything in relation to spiritual matters, or such as pertain to the charge of souls; especially as by virtue of the Constitution of the United States the distinction between Church and State must be carefully kept in view. Nor has the civil power any authority in ecclesias-

tical things. Among us, therefore, marriages celebrated according to the laws of the Church, by those who are subject to her jurisdiction, are null and void when so declared by ecclesiastical law; so that those who should, under the pretext of civil sanction, live together as married persons, without having previously removed the ecclesiastical impediments, may be deprived of the privileges and communion of the faithful, and punished with the censures of the Church."

"On the other hand, marriages that are not recognized by the civil law, its conditions not having been complied with, may be considered valid by the Church, if no divine, natural, or ecclesiastical law stands in the way." (KENR. Theol. Dogm. vol. iii. p. 392.)

297. The law, in America, requires that copies of the various marriage registers should be sent annually to the city clerk, so that they may be placed on file, in order to serve as vouchers in the various legal suits that may arise in regard to marriages.

No small number of the clergy have doubted whether the civil government has a right to demand these copies of church registers; whether the furnishing them might not imply authority in the civil power to make laws in relation to this sacrament.

Yet we scarcely think that these objec-

tions are well taken. The State, as we have seen, has undoubtedly the right of regulating the civil effects of married life, such as the legitimacy of children, inheritances, and kindred matters.

Now, to do this, it is clear that a well-authenticated and incontrovertible knowledge of the validity of a matrimonial alliance is absolutely necessary.

It may be said, that civil courts can always refer to the minister or parochial register. Still, this would entail unnecessary delay, and useless labor; and would be withal accompanied with but scanty results.

It seems, therefore, to be just and wise that the civil law should demand that the records of marriages should be annually sent to the proper civil authorities.

§ 66. PUBLICATION OF BANNS: CASES.

298. The Fathers of the Council confirm the following sanction of the preceding Plenary Council of Baltimore:

"The Fathers hereby ordain that in all the dioceses of these States, after the Easter holidays of the year

1853, the banns of matrimony shall be published. We exhort all ordinaries to grant dispensations only for very grave reasons."

To this the Fathers of the Second Plenary Council subjoin:

"This most salutary discipline, which is already in existence, we most earnestly desire to remain permanent." (Conc. Plen. Balt. II. p. 174.)

299. The Statutes of the Diocese of Newark contain the following enactments:

1st. Missionaries can dispense with one of the three proclamations.

2d. In all places where mass is said, every Sunday, two proclamations of the banns should be made, unless a dispensation be obtained.

3d. In those stations where mass is said on alternate Sundays only, one publication should take place where the parties themselves reside; the other can be made in the next mission.

4th. When persons live more than ten miles distant from the church, one proclamation is sufficient; and it should take place in the station nearest to their home, or where the pastor resides.

5th. When the contracting parties live

in different missions, the banns should be published in both places.

6th. Dispensations should be asked for in writing, and canonical reasons alleged. (Statuta, app. i. p. 50, edit. 1869.)

300. Strangely enough, these wise prescriptions are but too frequently evaded in part, or entirely set aside. The publication of the banns is regarded with aversion by no small number of the faithful. They would rather pay any sum of money than be "called out."

And yet, in the publication of the banns, the church wishes to confer an honor on those who are about to receive this great sacrament. We can see no reason why it should be celebrated at night, or by stealth. Marriage is honorable in all.

"The law of the publication of the banns binds sub gravi." (GURY, De Matrim. n. 734. p. 497, edit. Baller. Romæ, 1869.)

Speaking of this country, Kenrick says:

"A pastor, who should omit the publication of the banns, would commit a grievous sin, though he were certain that no impediment stood in the way." (KENR. Mor. vol. ii. p. 310.)

Again, he says:

"The banns of 'mixed' marriages should not be published in the church, lest thus the ecclesiastical authority should seem to approve of them." (Ib.)

301. Canonical reasons for which a dispensation may be given, are:

1st. If there is any danger lest the marriage should be maliciously impeded.

2d. Any injury, infamy, or imminent scandal that would result from a delay of marriage.

3d. Fear lest a girl, that is pregnant, should be abandoned by her lover.

4th. Ridicule and shame, to which the parties might be exposed; if, for example, both are very old; or one far advanced in years, and the other very young. (GURY, l. c. p. 501.)

To this, Father Ballerini subjoins:

"Three things should be borne in mind:

"1. Both the bishop and the vicar general can delegate the faculty of dispensing with proclamations, to others.

"2. If, in the case of the necessity of immediate marriage, the proclamations should have to be made afterwards, the marriage itself should not be consummated before the publications have taken place.

3. "Though no pastor, can 'per se' dispense with the proclamations, as he possesses no power in 'foro

externo,' yet, in case of necessity, he may assist at a marriage, without having previously published the banns, whenever timely recourse to the ordinary is impossible. In other words, he may, in certain cases, make use of the principle, 'Necessity knows no law.'" (BALLER. apud Gury, not. a. p. 502, vol. ii.)

302. We subjoin one or two cases that may sometimes occur.

Sylvanus, a parish priest, is notified by a young man of his parish that he wishes to get married as soon as possible, but without being "called out," as his intended is already far advanced with child. The pastor promises to write at once for a dispensation from the banns, and appoints a certain day for the celebration of the marriage. But, alas! so many matters were to be attended to by Sylvanus, as to make him altogether oblivious of the dispensation. The parties present themselves at the time specified, and it is only then that he remembers the case. After short hesitation, he joins them in wedlock. Was his conduct reprehensible?

We answer, he certainly could, nay, was obliged to marry them, when they came, as the law is supposed not to be binding

in such a case. But he should, perhaps, have been a little more thoughtful in procuring the dispensation.

303. At another time, Sylvanus has a similar case in hand. He writes promptly for the dispensation, but obtains no answer. Again, he marries the couple, taking it for granted that his petition was granted. Was he correct with regard to his mode of action?

We reply in the affirmative. At any rate, it may safely be assumed that the bishop was willing to suspend the law under such circumstances. The best way to obviate these difficulties, is to send one of the parties about to be married, to the ordinary for the dispensation.

304. Finally Sylvanus forgets to publish the banns on the first Sunday set down for that purpose; on the following Sunday he proclaims them. The parties about to get married, thinking that the two publications had been made, wish to be united in matrimony forthwith. Sylvanus, in fact, celebrates the marriage, and then makes the second proclamation on the Sunday succeeding the marriage.

It may be asked, therefore: Can the publication of the banns sometimes take place after the marriage itself has been contracted? We reply in the affirmative. This appears certain from the note of Ballerini quoted above. Yet there must be a necessity for so doing. Was there such a necessity in the case referred to? We think there was, as otherwise the contracting parties would have been exposed to no slight inconveniences.

§ 67. CLANDESTINE MARRIAGES: DECREE OF COUNCIL OF TRENT: TEACHING OF THE SECOND PLENARY COUNCIL OF BALTIMORE: DECISION OF THE PROPAGANDA WITH REGARD TO CHINA.

305. We now proceed to explain the last part of this chapter of the Second Plenary Council of Baltimore. The fathers say:

"The decree of the Council of Trent regarding clandestine marriages, has certainly not been promulgated in the greater part of the dioceses in this country. The Fathers of the Fifth Council of Baltimore thought that it was scarcely expedient to extend the decree of the Council of Trent to the other parishes in the Diocese of Detroit, beyond those of

the city itself; nor to any of the other dioceses in the United States, except where it is known to be already promulgated: and the Holy See should be requested to dispense also with it in the city of Detroit itself." (Conc. Plen. Balt. II. n. 340, p. 177.)

306. To this, the Fathers of the Second Plenary Council of Baltimore add:

"As the same state of things still continues to exist, we adhere to the above opinion. For many grave inconveniences would appear to us inevitable, if the presence of the parish priest were necessary to the validity of marriage among Catholics. . . . In order that all doubt may cease, and safety of conscience be insured, and at the same time uniformity may exist in a matter of such vital importance, it would seem to us best, that if possible, the present discipline which is almost everywhere prevalent in our midst, should, by authority of the Holy See, be introduced throughout the land, except in the Province of New Orleans." (Conc. Plen. Balt. II. p. 177.)

Rome's answer, however, to this petition was:

"As the Fathers of Baltimore, in tit. v. c. ix. n. 367, requested that in all the provinces of the United States, except New Orleans, the impediment of clandestinity should be declared as abolished, the Most Holy Father has thought fit by no means to accede to such a demand." (Instr. iii. S. C. de Prop. Fid. ap. C. Balt. p. cxiv.)

307. This question deserves somewhat of closer attention. No one will deny that the difficulties and perplexities surrounding the present discipline are neither few nor slight. Both sides of the question, as well as the wishes of the Holy See, will best be seen from an Instruction of the Holy See given in 1821 to the bishops of China, and lately also sent to Bishop Baltes, of the Diocese of Alton, Illinois.

The condition of China is similar to that of America in this respect, and therefore the Holy See applies the same rules to both, as is evident from the fact of the same Instruction being sent to both countries.

308. We proceed to analyze it. Its main points are thus summed up:

From letters of Chinese missionaries, the Sacred Congregation is informed that in China the custom prevails of contracting marriage according to the laws of the Church and Empire, with a second party, even when carnal intercourse, preceded by a promise of marriage, has taken place with a different person.

Now, according to a Declaration of Pope

Gregory IX., a promise of marriage followed by carnal intercourse constitutes a true marriage, and hence the second union, though contracted according to all the prescriptions of the Church and State, is null and void, and the parties must be compelled to return to their first betrothed.

But, replied the missionaries in their letter to the Sacred Congregation, the people were never instructed in any such doctrine; that therefore they were invincibly ignorant of the law; that it was scarcely practicable in future to promulgate it, on account of grave difficulties and scandals that would doubtless be occasioned by it among Christians as well as pagans, all of whom firmly believe that no marriage is valid except when celebrated according to the prescriptions either of the Church or State.

309. From this statement, the Sacred Congregation infers that the following doubts may arise:

1st. Whether in China, where the decree of the Council of Trent is not yet promulgated, a promise of marriage followed by carnal intercourse constitutes a true marriage, even though the act be

committed without any marital affection or intention, but merely through lust, and even when the parties think that they only commit fornication, by no means thereby contracting marriage, and that therefore they are still at liberty to pass to other nuptials; such being the universal persuasion and custom of their countrymen.

2d. What should be observed by missionaries, especially confessors, in regard to those faithful who, having made a promise of marriage, which was followed by sexual intercourse, should contract with a different party, thinking the latter to be a just and valid marriage.

3d. Which is the best advice to missionaries seeking a means to prevent clandestine marriages and the sad consequences following from them?

As will be observed, the first doubt contains the dogmatic question; the second and third refer to its practical bearings.

310. In reply to the first, the Sacred Congregation premises:

(*a*) That it can scarcely be supposed that all the faithful, without exception, should be unaware of the law of the

Church: some may; but others there surely must be who are cognizant of it.

(*b*) We must remember the rule which Pirhinghius lays down for such cases, namely, that "the Church presumes the marital intent, as the spouses are supposed to have excluded sin, and therefore to have acted, not as fornicators, but in legitimate wedlock. The bethrothed therefore should not be listened to, at least in 'foro externo,' in asserting the contrary, though in the tribunal of penance, or in 'foro interno,' this rule does not obtain."

311. Having premised these two points, the Sacred Congregation answers the first doubt in the following manner:

"In places where the decree of the Council of Trent is not promulgated, if two persons, having promised marriage, subsequently have sexual intercourse 'affectu libidinoso, non autem maritali,' such an act does not cause the promise of marriage to become a true marriage in 'foro conscientiæ,' or in the tribunal of penance and before God; and hence they are at liberty to contract other nuptials,

provided the previous engagement be dissolved for sufficient reasons.

"But if such an act be proved in 'foro externo,' or before the proper ecclesiastical tribunal, they can be compelled by ecclesiastical authority to consider each other as truly married, and to cohabit in consequence."

312. From this we infer:

(*a*) That except in the tribunal of penance, or the confessional, the bishop or pastor, or any other ecclesiastical superior, must consider such parties as legitimately married, even though they protest that they never had any intention of marrying when they committed the act.

(*b*) That even in the confessional, a promise of marriage, with subsequent carnal intercourse is, "per se," sufficient evidence of the marital intent, as it is supposed that they wished to avoid sin.

(*c*) That, however, if in the confessional parties assert that they had no such intention, it may be regarded as an evidence that marriage was not contracted.

313. Now, how shall the confessor dis-

cern when this marital intent existed, and when it did not?

The Sacred Congregation, in answer to this, says that caution should be used; that the confessor should quietly ask the penitent whether the act was committed with any marital affection. If a negative reply is given, nothing should be said, as the second marriage is valid.

If, however, an affirmative answer is returned, he must frankly be told to separate and return to the first spouse, with whom the act was committed, and rather suffer any punishment than cohabit with the second one.

314. But, how prevent the scandal which such a doctrine must cause among the people?

The Sacred Congregation replied to this, that the best advice which could be given by the Church was to promulgate the Tridentine decree — that when the presence of the pastor was not possible, two witnesses would be sufficient; that in missionary countries, where the decree could be promulgated in its full extent, it was merely requisite to contract in presence

of the missionary priest or quasi pastor, or any one else deputed by him, and two or three witnesses; that where it could be but partially published, it would be quite sufficient to contract marriage before two or three witnesses, in case the pastor could not be present; under condition, however, of receiving ecclesiastical benediction from a priest, when occasions should present themselves of doing so. The marital consent cannot be renewed a second time. This, as concludes the Instruction, would seem to be the only way by which inordinate and clandestine marriages can be entirely cut off with the divine assistance, and in which this great sacrament may be reinstated in the pristine dignity which among no small number of the faithful it seems to have lost.

§ 68. DECISION IN REGARD TO CHINA APPLICABLE IN AMERICA.

315. Resuming the case for America, we see:

1st. That in this country, a promise of marriage, when followed by carnal inter-

course, exercised with marital intent, constitutes a true marriage; and hence neither the assistance of the parish priest, nor any witnesses whatever, are necessary to its validity.

2d. This state of things engenders the difficulty of determining the circumstances that indicate a marital affection in sexual commerce. This embarrassment is heightened by the fact, that in America no less than in China, the current opinion seems to be, that no marriage is valid except when celebrated in the presence of a priest or magistrate, and at least two witnesses.

It may perhaps quite truly be retorted, that such an opinion is traceable rather to a desire of entering upon the married state in the usual honorable and public manner prescribed by the laws of Church or State, than to a persuasion of invalidity of the sacrament. This may be granted in part, yet the perplexity still remains. How, we repeat it, will the confessor ascertain definitely the existence of the marital intent?

3d. The third difficulty arises from the fact that no small number of persons, having had carnal intercourse after giving a

promise of marriage, pass to other nuptials, even when there is every reason to believe that they acted affectu maritali. As this second union is undoubtedly null and void, it will be seen that many of those who were married according to the ritual of the Church or the laws of the State are mere concubines. Thus they cohabit not unfrequently for twenty or thirty years The children who are the offspring of this concubinage grow up to be young men and women.

After the lapse of so many years, the confessor may detect the illegitimacy of the attempted wedlock; and it needs but an ordinary amount of perspicacity to see what perplexities must follow.

316. All this is simply the result of the non-promulgation of the decree of Trent. Is it not, then, very appropriate that the Holy See should advise its promulgation in America, as the best means of preventing illegitimate wedlock, doubts and difficulties to confessors, and of restoring to this great sacrament the honor which it seems to have lost among many in this country?

317. But let us view the opposite opinion. We have seen that the Fathers of Baltimore are of opinion that our circumstances are such as not to make it expedient to promulgate the Tridentine decree, since it might bring on a conflict between the civil and ecclesiastical authorities. These reasons will best be seen from the letter of the Bishop of New Orleans to the Sacred Congregation, dated April 4th, 1822.

Its chief points may be summed up as follows: many marriages are contracted in the Diocese of New Orleans by parties, either entirely Catholic, or mixed, that is, but one being a Catholic, and the other a Protestant, in the presence of the sectarian minister, or civil magistrate.

Now, if it were held that the decree of Trent had been promulgated, grave consequences must follow.

318. The first difficulty would occur in regard to marriages, either mixed or purely Catholic, contracted before the Protestant minister or civil magistrate, as not unfrequently happens in this country.

Such marriages would be void, in case the promulgation of the decree of Trent

must be presumed. Yet the civil law will sustain their validity. Hence, a conflict may arise between Church and State. For let us suppose that one of the parties should become penitent, or embrace the Catholic faith, while the other should remain either impenitent or unconverted to the faith, and refuse to renew the consent in presence of the pastor and two witnesses, as the Tridentine decree prescribes: the civil law, in this case, could compel the repentant party to cohabit with the other, and thus violate the law of the Church.

The only means of avoiding any such disastrous conflict would appear to the bishop (of New Orleans) to be to declare the decree as not promulgated.

319. The Sacred Congregation answers these difficulties as follows:

1st. If both parties are Catholics, they must either renew the consent in accordance with the prescriptions of the Tridentine decree, or separate entirely from each other, as the first consent was invalid.

Should they wish to contract other nuptials after the separation, they must first obtain a civil divorce. Nor will they, on

this account, approve the doctrine of civil divorce, or actually intend to sever the former marriage tie, as none whatever existed; but they will merely make use of the law to shield themselves from unjust civil annoyances.

2d. If, however, one party is Catholic, and the other Protestant, the difficulty vanishes at once, as the Declaration of Benedict XIV. pro Hollandia is applicable to them. They in no sense come within the reach of the Tridentine decree, and hence such mixed marriages, when contracted before the Protestant minister or civil magistrate, are valid, even where the decree of Trent is promulgated, provided the country be not a purely Catholic one.

Such is the import of the famous Declaration of Benedict XIV. for Holland.

3d. Moreover, the promulgation of the decree must be taken for granted, from the fact of its having been observed at one time in a given place.

4th. It would be absurd and setting bad example to give a general dispensation of the decree, even with regard to purely Catholic marriages. This request, there-

fore, must be refused by the Holy See, especially as a similar petition of the bishops of Canada, in 1764, had been set aside.

5th. The famous Declaration of Benedict XIV. extends to marriages only where one of the parties is Catholic and the other Protestant, or where both are Protestants; but in no respect does it comprise marriages where both are Catholics. (BENED. XIV. De Synod. Dioces. lib. 6. cap. 6. § 13.)

6th. The same holds good of the Declarations of Pius VI. and Pius VII.

320. From this answer, we perceive that the Holy See desires this decree to be promulgated throughout the United States. At the same time, it is apparent that the difficulties attendant on its promulgation are easily avoided or overcome, and are but slight in comparison with the uncertainty and unsettled state of conscience occasioned by its non-promulgation.

To understand this question more thoroughly, it may not be amiss to consider what is meant in this country by a promise of marriage.

§ 69. BETROTHALS.

321. A promise of marriage or betrothal is defined:

"An espousal or betrothal is a declaration and mutual promise of future marriage." (KENR. Theol. Mor. vol. ii. tract. xxi. cap. i. p. 279.)

This promise must be based upon a true consent, that is, a sincere intention of binding oneself by the declaration, given externally. Hence a promise made without sufficient deliberation, or serious thought of contracting the obligation, is simply no promise of marriage at all, in the canonical sense of the term.

No doubt, many such rash and inconsiderate promises are exchanged among young people, and are followed by sexual intercourse. In these cases, there was no canonical betrothal, and consequently no marriage.

It is, then, important to know whether such promises are of a serious nature, or whether they are but the effect of momentary excitement.

Nor is it sufficient that these conditions

should be fulfilled by one of the parties only; they must be complied with by both. An "engagement," therefore, or promise of marriage, must be:

1st. Sincere.

2d. Mutual.

3d. Deliberate.

4th. Legitimate, that is, not contrary to law.

322. The canonical effects of a legitimate promise of marriage are:

1st. Such a promise, when followed by carnal intercourse, exercised affectu maritali, which is to be presumed, passes into a valid and true marriage.

2d. It induces a grave obligation of marriage. For, as Innocent III. says, "those who recede from their promise without weighty reasons, commit sin by breaking their word in so important a matter, thus exposing to imminent risk the good name of the other party concerned." (Apud KENR. Mor. vol. ii. p. 282.)

3d. "The impediment 'publicæ honestatis,' which extends to the first degree of consanguinity only, is thereby contracted. Any special form of words is not neces-

sary to a valid 'engagement.' All that is required is that the words should express the mutual consent or promise of marriage. Before the Council of Trent, a specified formula was indispensable." (WALT. § 296, p. 582.)

323. Nor is any solemnity essential. A simple promise, without any ceremonies or witnesses, and without the giving of presents, is quite enough to constitute a legitimate promise of marriage.

Hence, what we call in this country an "engagement," though generally made without any formality whatever, obtains fully in canon law.

In Europe, the customary solemnities are generally observed; while in America this laudable usage is but rarely followed.

Canonists sometimes call marriage itself by the name of "sponsalia de præsenti," while the promise is termed sponsalia de futuro.

324. From this short glance, it will be seen how difficult a confessor's position is in the present state of affairs. For, first of all, it is in many cases no easy task to determine whether a promise of marriage contains all

the elements required by the law of the Church to make it a valid engagement.

Secondly, even supposing a proper betrothal to have taken place, it is still very hard to ascertain whether the subsequent carnal act was exercised affectu maritali, or whether it was simply fornication.

Thirdly, all this is rendered still more intricate and perplexing by the fact that our present discipline is but partially and imperfectly known by the people. Hence scruples and false consciences are easily engendered.

325. Of the publication of the decree of the Council of Trent on clandestine marriages, Kenrick says:

"The Tridentine decree on clandestine marriages is promulgated throughout the whole of Italy, Spain, France, and Ireland, as also in many other places. But only at a later date, namely, on Dec. 2, 1827, was it published in the Diocese of Dublin and several other dioceses of Ireland." (KENR. Mor. vol. i. tract. xxi. De Matr. c. v.)

In this quotation, Kenrick appears to assume that the Tridentine decree, which was introduced into the Diocese of Dublin in 1827, had already been previously promulgated in the other parts of Ireland.

326. We would also call attention to various abuses that result from the non-promulgation of this law in the United States.*

It has not unfrequently occurred, that parties wishing to get married, even when impediments stood in the way, went to the pastor of a different parish, and deceiving the priest, who knew them not, got married by him. Now the Tridentine decree enacts that no marriage shall be valid that is not contracted in the presence of the pastor either of the bride or bridegroom. Hence no one can be validly married by any one but his own parish priest.†

* Kenrick thus speaks:

"In the greater part of the United States, no vestige of the publication of the Tridentine decree exists; wherefore marriages entered into by the sole consent of the contracting parties, without the presence of the pastor or other priest or witnesses, are valid, as may be inferred from responses of the Sacred Inquisition to the Bishop of Quebec." (KENR. ii. Mor. p. 331.)

† With regard to marriages of strangers, the same author says:

"In this country, whither strangers flock from all parts of the globe, going from one State to another, the law can scarcely be vigorously carried into effect. As a general rule, no document concerning their condition of life is extant; nor is there a way of finding out whether these strangers are single or married, except by the sworn affirmation of the parties themselves, or by the testimony of others who know them. Even when this point is satisfactorily settled, care must also be taken not to marry per-

This, it seems, would be a powerful means of putting a stop to the above abuse. This reasoning applies with equal force to marriages performed by ministers and magistrates. When Catholics once understand that such marriages are not only illicit but invalid, and of no effect whatever, they will more readily shrink from profaning this great sacrament.*

The objection sometimes made, that we have no canonically instituted parishes, is of no account, as it is not necessary that these should exist where the Tridentine decree is promulgated. Such is a brief

sons belonging to another parish; for any priest, whether regular or secular, uniting in marriage parishioners not his own, incurs suspension, durable at the will of the ordinary of the parish." (KENR. l. c. p. 331, ex decr. S. C. die 14 Aug. 1627.)

* The Council of Trent says:

"And whereas it (C. Trent) takes into account the grievous sins which arise from the said clandestine marriages, and especially the sins of those parties who live on in a state of damnation, when, having left their former wife, with whom they had contracted marriage secretly, they publicly marry another, and with her live in perpetual adultery. . . . Those who shall attempt to contract marriage otherwise than in the presence of the parish priest, or of some other priest by permission of the said parish priest, or of the ordinary, and in the presence of two or three witnesses; the Holy Synod renders such wholly incapable of thus contracting, and declares such contracts invalid and null, as by the present decree it invalidates and annuls them." (Sess. xxiv. chap. i. on Reform.)

summary of the arguments tending to show that the promulgation of the decree of Trent is not only possible, but extremely desirable, if not morally necessary, in America.

CHAPTER XXII.

On the Sacrifice of the Mass.

See Conc. Plen. Balt. II. tit. vi. De Cultu Div. cap. i.: Kenrick, Mor. vol. i. p. 230: Gury, Mor. edit. Ball. not. ad tom. ii. § 361. p. 210.

§ 70. OBLIGATION OF OFFERING UP MASS ON SUNDAYS AND FESTIVALS FOR THE PEOPLE.

327. PASTORS are, as a general rule, obliged to apply mass for their flocks on Sundays and holidays. The Fathers of Baltimore state that this obligation was more especially explained and confirmed by Benedict XIV. in the constitution "Cum semper oblatas," in which it is clearly and openly set forth and decreed, that parish priests and others actually having the care of souls, are bound to offer up the sacrifice of mass for the people confided to them, on Sundays and holidays. (Ap. Conc. Plen. Balt. II. n. 366.)

From these words Kenrick infers "that missionary priests, having charge of souls as quasi pastors, are undoubtedly obliged to apply mass for their people, on the days above specified." (KENR. Mor. vol. i. tract. viii. p. 230.)

Our great American theologian, it would appear, does not think that the constitution of Benedict XIV., "Cum semper," August 19th, 1744, extends merely to places where the Council of Trent is promulgated, and where parishes consequently are canonically established. Yet the affirmative opinion, which holds that the above constitution applies to places only in which the Sacred Council of Trent obtains, is now beyond doubt.

As no canonical parishes exist in America, Kenrick's inference cannot be maintained. He seems to have been led into his opinion by the words, "all priests actually having the care of souls," are obliged to offer up for their flocks; which is no doubt true in canonically established parishes. For it is the avowed object of the constitution of Benedict XIV. to comprise in this obligation not only pastors

themselves, but also temporary vicars, that is, those also who, though not being canonically appointed pastors, yet take their places for a time, until pastors are nominated, thus having actually charge of souls.

328. The Fathers of Baltimore put the question appropriately thus:

"As the Sacred Congregation of the Propagation of the Faith, in answer to certain doubts lately proposed in regard to the application of masses, has decided that missionaries who have charge of souls in some determinate and fixed district, are bound neither in justice nor in charity to apply mass for the people on holidays, the Fathers have thought it proper to request this S. Congregation more fully to explain its opinion, and signify whether the aforesaid response comprises the missionaries of this country, where canonically erected parishes do not yet exist." (C. Balt. n. 368. p. 190.)

The answer of the Holy See, given Aug. 18, 1866, was as follows:

"1. An vicarii apostolici ac missionarii, qui quovis modo curam animarum in certo aliquo loco assumunt, omnes indistincte obligentur ex justitia ad applicandam missam pro populo in diebus festivis.

"2. An vero de illis, qui ex justitia non obligantur, dici debeat 'decere' ex charitate, aut 'teneri' ex charitate, ad applicandam missam pro populo in diebus festivis.

"Jam vero cum de his quæstionibus actum fuerit in generalibus comitiis eyusdem S. Congregationis habitis die 23 Martii anni 1863, Emi., Patres respondendum censuerunt:

"'Ad 1. Negative, dummodo non agatur de locis in quibus sedes episcopales ac parœciæ canonice erectæ jam sint, atque ad eas vicarii apostolici ac missionarii missi sint ut legitimorum pastorum vices gerant.'

"Ad 2. Vitandam esse locutionem teneri ex charitate, dicendum vero esse, decere ex charitate, idque ita ut nulla proprie dictæ obligationis significatio appareat." Datum Romæ . . . die 18 Augusti, anno 1866." (Apud Conc. Balt. p. cxlviii.)

329. From this decree, it follows:

1st. That pastors in this country are bound neither in justice nor in charity to offer up mass for their people on holidays, though it is becoming to do so.

2d. That by the terms "diebus festivis" are meant "all Sundays" and festivals of precept.

3d. This obligation is local, not personal. Hence missionary priests assuming charge of souls in a canonically established parish are obliged to apply mass for the people.

We remark, however, that formerly the S. Congregation had decided that missionaries were bound to offer up the sacrifice of the mass for their people on holidays,

not indeed in justice, but in strict charity, that is to say, under pain of mortal sin. In 1862, however, the words "it is becoming in charity" were substituted for the former, "it is obligatory in charity." (BALLER. not. ad Gury, tom. ii. 210.

§ 71. STIPEND OF MASS.

330. The next question to be treated is, can priests having charge of souls as quasi pastors, receive a stipend for one mass celebrated on a Sunday or holiday of obligation.

We answer in the affirmative. For, unless there be some positive law forbidding it, missionaries may certainly receive a stipend on Sundays as well as on other days.

Now, does any such prohibition exist? We think not.

The Fathers of Baltimore say:

"An equitable stipend or offering may lawfully be received for the celebration of a mass, which the priest is at liberty to offer up as he chooses: for this stipend is not given as a price or compensation for the mass itself, but merely for the support of the celebrant." (Conc. Plen. Balt. II. n. 369, p. 190.)

331. Again, they continue thus:

"But as regards the exact amount of offering to be determined by the bishop, no universal rule can be laid down in these States, extending over such immense tracts of land." (Ib.)

In most of the States, the offering, as fixed by custom or episcopal sanction, is one dollar in currency.

"By law or custom," says Kenrick, "the stipend of mass with us is a half-dollar, that is, fifty cents." (Mor. vol. ii. p. 167.)

This was the alms before the war, when no inflated and depreciated money yet existed. Now, it has been raised almost everywhere to one dollar.

From all this, no one can deduce any prohibition against receiving a stipend for one mass on Sundays and festivals.

322. But it may be objected that the Sacred Congregation of Rites, in a decree dated September 25, 1858, directs "that priests who celebrate two masses on Sundays and festivals, even when obliged to say one mass for the people on those days, are not bound to apply both masses for their parishes; yet neither can they receive a

stipend for the second mass." (KENR. Mor. vol. i. p. 230.)

This decree, however, if it prove anything at all, must confirm our thesis. For it enacts that no stipend can be accepted for the second mass by priests "who are obliged" to offer up one mass for the people on the above days. Now, as we have seen, in America, priests are not bound either in justice or in charity to apply mass for the people on holidays. Hence they by no means come within the reach of the decree. Its object is to prevent a spirit of filthy lucre from creeping into so sacred a mystery. Hence it ordains that two stipends should not be received for two masses celebrated on one day.

It is equally apparent from the above decree, that while missionaries in this country are not inhibited from receiving a stipend for one mass on Sundays and festivals, yet they cannot accept of two stipends, one, namely, for each mass.

333. This conclusion is corroborated by the opinion of most theologians, "that if a canonically installed pastor should depute a vicar or assistant priest to celebrate mass

for the people on festivals, the latter is entitled to a stipend from the pastor." (GURY, tom. ii. § 363. p. 210.)

But, if those priests who are not bound to offer up for the people can receive a stipend on Sundays and festivals, why should not missionaries in this country be entitled to the same privilege?

Nor would it even be a venial sin to accept of a stipend, as there is no obligation whatever of offering mass for the people on the above days. The contrary is simply a matter of counsel. (BALLER. not. ad Gury, tom. ii. p. 210.)

334. Our conclusion then is, that priests having charge of souls in this country can receive a stipend for one mass on Sundays and holidays of obligation. Stipends for both cannot be accepted by them, as is apparent from the decree given above. No doubt it is fitting and commendable that all pastors should celebrate frequently for the wants of their flocks. A zealous missionary will need no law forcing him so to act. But, for the present, we must not forget the distinction between what is obligatory and what is laudable.

§ 72. FOUNDATIONS FOR PERPETUAL MASSES.

335. The Fathers of Baltimore very opportunely call attention to another matter:

"We cannot but declare that it is an intolerable abuse and profanation of sacred things, that, as has already several times occurred, public and frequent invitations to foundations of perpetual masses should be inserted for several months in public newspapers, among secular matters." (Conc. Plen. Balt. II. n. 370.)

This would seem indeed to be an excellent decree. A great anxiety for building churches, entirely too expensive, has induced some to appeal for assistance to the public through newspaper advertisements, promising to have masses said perpetually for the benefactors. This may be harmless in itself. Yet such newspaper advertisements do not seem calculated to preserve the dignity of so great a sacrifice.

336. However, it is said that this rule is entirely disregarded, not only by priests, but by bishops themselves. Thus we read the following in the pages of the New York Freeman's Journal, Sept. 13, 1873:

"A Casus Conscientiæ."

"A Rev. correspondent in Wisconsin writes us, as a friend, to know how we reconcile it to our known obedience to law, to publish in our columns advertisements of 'perpetual masses,' by this or that fully responsible body, notwithstanding the decrees of the Plenary Council of Baltimore held in 1866.

"In response, we say, that the published Acts and Decrees of the Plenary Council of Baltimore, A. D. 1866, form a very handsome volume. Not only that —we keep it as a book of reference—and marvel very much at seeing how utterly it is disregarded in matters in which it were much for Catholic edification that its prescriptions should be observed. When we first received it, we supposed that it was to be law for the Catholics of the United States.

"We accordingly wrote to a venerable religious monastery, saying that we must discontinue its advertisement—of the very kind our correspondent speaks of. We received, in due time, a letter certifying that the bishop of the diocese where this monastery was, sanctioned its publication in our columns. Right on the head of this, the bishop of another diocese sent us, under his own hand, personally known to us, an advertisement of the same identical character. As to our individual conscience . . . we suspended their publication for a moment, supposing that it was ordered by our ecclesiastical superiors. . . . When we found some of our bishops disregarding the prescription, and when we saw, right and left, that the handsome Acts and Decrees of the Second Plenary Council was put on the shelf—after the best advice we could

reach being taken—we resumed the publication of what we considered very good for the souls of Catholics.

"We did it in good faith, and with a very clear conscience. When our Most Rev. Prelates consider it good to enforce 'all' the acts and decrees of the Plenary Council of Baltimore of 1866, they will begin by observing them themselves. We will then humbly follow their example 'ad amussim.'"

The following is part of a sample of some of these advertisements:

"U. J. O. G. D.

"To all the friends of Jesus in the Bl. Sacrament.

"But wishing besides to prove to our benefactors our personal gratitude, we, the religious of St. —— Abbey, take for ourselves and successors the following engagements:

"1. For each person offering five dollars, we shall say one mass immediately, and one after his or her death, when the receipt handed for the gift is sent hither.

"2. For each person offering twenty-five dollars, we shall say two masses immediately, and three after his or her death.

"3. For each person offering one hundred dollars, we shall say five masses immediately, and henceforth one every year as long as the monastery shall exist.

"4. For each person offering five hundred dollars, we shall sing one high mass immediately, and one every year hereafter, and his or her name shall be placed in the Mortuary or list of the benefactors which is publicly recited every day after prime."

CHAPTER XXIII.

On Benediction of the Blessed Sacrament and Forty Hours' Devotion.

See Conc. Plen. Balt. II. l. c. cap. ii. n. 374: Benedict XIV. Instit. xlviii. p. 226, edit. Prati, 1846.

§ 73. CONDITIONS OF GAINING THE INDULGENCES: HOLY COMMUNION: TIME OF RECEIVING IT.

337. We ask:

1st. How often is Benediction of the Blessed Sacrament allowed in the ordinary parish churches of this country?

2d. What are the conditions of gaining the plenary Indulgences?

3d. Is it sufficient to go to confession on Saturday, and receive holy communion on Sunday at the early mass, preceding the mass of exposition?

338. In answer to the first question, we quote from the Fathers of Baltimore:

"Whereas the Church has not defined by the com-

mon law, but rather left it to be determined by the bishops, how frequently, considering the circumstances of place, as well as the spiritual wants of the faithful, the Blessed Sacrament might usefully be exposed to the adoration of the faithful, we being desirous of augmenting their devotion toward this most venerable sacrament, . . . have determined that the exposition and benediction of the most holy sacrament may take place once a day only, in all churches and chapels of monasteries, and religious communities, on every Sunday of the year, on all holidays of obligation, or also on feasts merely of devotion, of the first and second class. . . . During the octave of Corpus Christi, however, solemn benediction may be given at the high mass and at vespers.

"It shall be allowed, moreover, to give solemn benediction twice a week during Lent; on each day of a holy mission; on the feast of the Sacred Heart of Jesus, and during the Devotion of the Forty Hours; also on other days that may be designated by the ordinary." (Conc. Plen. Balt. II. n. 375, p. 194.)

339. In conformity with this prescription, the Statutes of the Diocese of Newark contain the following regulations:

"We grant that besides the days named by the Council of Baltimore, No. 375, the venerable sacrament may be exposed, and solemn benediction given on all Sundays and feasts of our Lord Jesus Christ, on the principal feasts of the Blessed Virgin Mary, on all days within the octave of Corpus Christi; also

after the Devotion of the Stations of the Cross ; at the end of public novenas ; on the first and last days of May, and whenever the rules of approved confraternities prescribe it." (Statuta Dioc. Novarc. § 20. p. 31. edit. 1869.)

340. The conditions of gaining the plenary indulgence of the Forty Hours' Devotion are :

1st. To receive the sacraments of penance and holy eucharist.

2d. To visit the church where the Blessed Sacrament is exposed, once each day of the adoration.

3d. To recite during each visit a short prayer, saying five times the Lord's Prayer and the Hail Mary, according to the intention of the Holy Father.

341. Some questions on this head have already been answered by us, when speaking of indulgences. We there proved from the works of Benedict XIV. that the indulgence of the Forty Hours' adoration is gained by one who goes to confession on Saturday, and receives holy communion on Sunday at the early mass preceding the exposition.

In addition, we would say that confession is required,

(*a*) Either as a means of obtaining the state of grace which is essential in order to gain any indulgence; or

(*b*) As part of the conditions to be fulfilled.

In the first case, confession is not necessary at all for one already in the state of grace; in the second, it is essential independently of the state of grace.

But in neither case is it indispensable that the confession should be made after the exposition has actually begun, or during its continuance.

342. To the parallel case given already, we subjoin a similar one taken from the same part of the works of Benedict XIV.

A plenary indulgence was granted by Paul V. to all taking part in the procession of the Rosary society on the first Sunday of each month. Now, those processions are held so early, in some places, that the faithful cannot receive communion before they take place. Benedict XIV., being consulted on the case, decided that it was sufficient for penitents to be reconciled to

God in the sacrament of penance, with the view of gaining the indulgence of the procession, and receive the blessed eucharist on the same day.

343. Evidently the same principles apply to our case. It is therefore perfectly certain that the indulgence of the Devotion of the Forty Hours may be gained by receiving holy communion at the early mass preceding the mass of the exposition; provided, however, it be done with the view of gaining the indulgence.

The difficulty, it will be remembered, arises from the clause "qui vere pœnitentes et confessi, et sacra communione refecti, ecclesiam visilaverint, in qua sacra eucharistia publice cultui exposita est." (Conc. Plen. Balt. l. c.)

It therefore supposes, if anything, that both confession and communion should precede the exposition, or at least the adorations.

The only question in reality we find discussed by Benedict XIV. is, whether confession and communion may be performed after the other actions that are prescribed. He seems to take it for

granted that they may, nay, should go before the other works, being preparatory dispositions.

344. Such also is the general impression and custom of the faithful, confirmed by the tacit consent of the bishops. Besides, it would otherwise be very difficult for many to gain the indulgence at all. They could scarcely leave off their work to go to confession and communion on a weekday. Now it can hardly be supposed, as the great pontiff Benedict XIV. observes, that the Pope should wish to exclude all those from the possibility of obtaining the indulgence. Neither is it necessary to receive these sacraments in the church where the exposition is going on, as it is merely prescribed to make the visits there.

CHAPTER XXIV.

On Uniformity of Discipline.

See Instr. ii. Prop. Fid. apud Conc. Plen. Balt. II. p. cxliv.: Kenrick, Mor. vol. i. tract. iv. De Leg. cap. i. p. 125.

§ 74. OBSERVANCE OF LENT IN THE UNITED STATES.

345. As regards the observance of Lent, some difference of custom exists in the various dioceses of this country. Thus, in most of the Western dioceses, the Saturdays of Lent are not days of abstinence from flesh meat, while they are in most of the Eastern States.

Nor would the Holy See, when requested by the late Plenary Council of Baltimore to grant a universal dispensation for the Saturdays of Lent, consent to do so, wishing that each bishop should apply in particular, and expose the reasons for the petition. (Instr. iii. l. c.)

Hence it is not in the power of any bishop to give a dispensation from flesh meat on Saturdays in Lent, wherever the contrary custom prevails.

That in this country this dispensation would be desirable, nay, almost necessary, arises from the difficulty of obtaining proper Lenten food, especially by the poor and hard-working classes. For them it may be said to be morally impossible to abstain from flesh meat three days during each week of Lent.

Practically speaking, no small number of them are excused from this precept on account of hard labor.

346. What are called "ova et lacticinia" are permitted in the United States; and eggs, milk, and butter or cheese can be used both in the morning and evening, provided due quantity be observed. (KENR. Mor. vol. i. p. 134.)

"This privilege," this author further says, "exists by permission of the bishops, to whom the faculty of dispensing from eggs and milk is granted by the Apostolic See." (Ib. p. 137.)

Again, continues Kenrick, "those who,

on account of hard labor or old age, are excused from fasting, can eat meat at each meal on those days on which, by episcopal indult, others are allowed to eat it but once a day, namely, at the principal meal." (S. Pœnit. 16 Jan. 1834, ap. KENR. Mor. vol. i. p. 137.)

347. Finally, we add the salutary advice of Kenrick, namely, "that few in this country are obliged to fast. For most people have to work hard either on farms or in factories. This holds good, especially as Lenten food is costly and cannot easily be purchased by the poor; and the produce of American soil does not contain the same quantity of nutriment as elsewhere. Hence missionary priests should be careful not to be too strict in urging this obligation, lest they cause the faithful to commit sin from an erroneous conscience." (KENR. l. c.)

§ 75. OBLIGATION OF RESTING FROM SERVILE LABOR AND OF HEARING MASS ON HOLIDAYS.

348. No less variety of custom obtains in regard to holidays of obligation. In

most dioceses eight are observed, viz. the Nativity of our Blessed Lord, Circumcision, Epiphany, Ascension, Corpus Christi, Annunciation, Immaculate Conception, and the feast of "All Saints."

It may be asked whether with us it is obligatory to hear mass and rest from servile labor on these holidays?

We answer, that all over the United States, the obligation of resting from servile labor would practically appear to lie in abeyance, as very few indeed observe it. The bishops may be said tacitly to give their approbation by not forbidding this violation of the law.

Thus, the Statutes of the Diocese of Newark say:

"It were desirable, indeed, that holidays should be carefully observed among us. But as it is difficult to abstain from servile labor, especially for those who depend on Protestant employers, earnest endeavors should be made to induce the faithful at least to assist at one mass on those days, if they occur during the week. And therefore missionaries, in order to satisfy the devotion of the faithful, should, if possible, say at least one mass, early in the morning. Let them admonish the people to attend to their labor, not of their own accord, but by permission of the priest. In

cities, and in other places where a pastor resides, divine service should take place in the same manner as on Sundays, even though but a small number of the faithful be present." (Statut. Dioc. Novarc. cap. iv. § 6. p. 44.

Kenrick maintains the same opinion. "But in this country," he says, "causes may easily arise on account of which those are excused who do not strictly keep holidays." (KENR. Mor. vol. i. p. 125.)

From what has been said it is apparent that no general dispensation from the due celebration of festivals exists; that "per se," therefore, we are bound to keep them in the strict sense of the term. We are excused by the law, common to all countries, either of physical or moral impossibility; singly, not collectively.

In the dioceses of New Orleans, St. Louis, Mobile, Vincennes, Dubuque, Little Rock, and Chicago, the feasts of Circumcision, Epiphany, Annunciation, and Corpus Christi are not holidays of obligation.

349. As regards the precept of abstaining from servile labor, it would seem in many cases morally impossible to comply with it, for the reasons already indicated.

Is this also the case with the hearing of mass?

As the precept of observing holidays is itself divisible, so that one part may be complied with, irrespectively of the other, we think that the obligation of hearing mass may sometimes remain, when that of resting from servile labor has ceased. Yet even here, many reasons will tend to take away the stringency of the precept. As a general rule, labor in factories begins at so early an hour in the morning, as to render it no slight inconvenience for Catholics previously to hear mass, especially when they live at some distance from the church.

In scattered places, therefore, they seem, for the greater part, to be excused from the obligation of hearing mass; whilst in cities they ought to assist at it. Hence we should say that in cities an early mass ought to be said, and a second one at a later hour; while in country places one late mass suffices.

350. In Louisiana and the above-mentioned dioceses, only four holidays exist: the Nativity and Ascension of our Blessed

Lord, the Assumption of the Blessed Virgin, and "All Saints." The Council of Baltimore requested the Holy See to make the feast of the Immaculate Conception a holiday of precept throughout the United States, which petition was granted.

CHAPTER XXV.

On Dispensations and Ecclesiastical Burials.

Conc. Plen. Balt. II. n. 385. p. 200 seq.: Instr. Sacr. Cong. Prop. Fid. apud Conc. Plen. Balt. II.: Statuta Dioc. Novarc. cap. iv.

§ 76. LEVY OR TAX ON DISPENSATIONS.

351. It may be asked:

1st. Can a fixed fee be levied by the ordinary for dispensations?

2d. What rule should be observed in regard to burials, in places where no Catholic cemetery exists, as also when parties wish to inter deceased relatives in non-Catholic cemeteries where Catholic burying-grounds are already set apart?

In reply to the first question, we need scarcely premise that bishops cannot, jure ordinario, dispense with impediments of marriage; these being general laws of the Church, and consequently beyond the jurisdiction of any particular bishop.

It may, however, be observed that by custom some of the minor impediments are relaxed by bishops, even jure ordinario, or, as canonists say, jure quasi ordinario.

As bishops, therefore, receive these faculties from the Holy See, their dispensations are void when given for insufficient reasons.

352. Again, is it conformable to ecclesiastical law to demand a fixed tax for dispensations?

In reply, we translate the response of the Sacred Congregation to the Fathers of Baltimore, which is as follows:

"As the eminent cardinals perceive, that notwithstanding the express prohibitions of the Holy See, contained in the 'Formula of Faculties,' it was nevertheless disputed among the Fathers of Baltimore, whether in granting dispensations of marriage, certain fixed sums should be demanded, and especially as the same eminent cardinals have reason to believe that, as a matter of fact, such determinate taxes are exacted in some countries, they thereby inculcate on the bishops of such places the observance of said prescription, according to which no money can be received, under any title or pretence, for dispensations of impediments of marriage." (Instr. ii. Prop. Fid. ad 3m. ap. Conc. Plen. Balt. II.)

In the Formula of Faculties given to bishops, this is still more explicitly enjoined:

"His Eminence," these are the words, "wishes and strictly commands that the respective bishops should make use of these faculties for most urgent reasons only, and then it should be gratis, imposing, however, some suitable alms, to be applied for charitable purposes."

353. Now, as the editor of the Council of Baltimore observes in a note, page 201, "an alms does not mean a fixed sum of money to be given by all alike, but simply what each one can easily contribute, considering his position and means."

It would then seem to be beyond doubt that no fixed sum can be set down for any dispensation. The bishop however, may suggest the amount of alms, to vary according to the circumstances and means of the petitioners.

We should rather be anxious to avoid even the shadow of avarice or simony. Wherever, therefore, an alms is enjoined for a dispensation, it should be distinctly understood that the money is not given for the dispensation, as no spiritual gift or

faculty can be purchased by money without committing simony; but simply that it is a penance imposed on the petitioner for the liberty granted by the dispensation. What the Church is obliged to relax in her discipline, she wishes to repair by charities. Besides, she wishes thereby to render dispensations more difficult and less frequent.

§ 77. ECCLESIASTICAL INTERMENT: SECTARIAN AND PROFANE CEMETERIES.

354. We pass to the next question, namely, that of ecclesiastical interment.

In the First Plenary Council of Baltimore, the following decree is found: "We do not wish the ceremonies of the Church to be used in the burial of the faithful, whenever their remains are interred in sectarian cemeteries or also in profane, wherever there are Catholic cemeteries." (Conc. Plen. Balt. I. no. 80.)

355. The Fathers of the Second Plenary Council of Baltimore modified this law thus:

"1st. When the relatives of a deceased Catholic, who became converted to the faith, are still non-Cath-

olics, and possess a lot in a profane or sectarian cemetery, we permit the funeral services to be celebrated either at the house, or also publicly in the church, if the pastor should judge it expedient, and conducive to the spiritual welfare of his flock." (Conc. Plen. Balt. II. no. 392. p. 203.)

"2d. If, however, the survivors are Catholics, and possess a lot in such a cemetery not by any fraudulent design, and from the year 1853, and in which bodies have already been interred, we leave it to the judgment and conscience of the pastor to perform the services prescribed in the ritual, privately at the house before the body is taken out. We command, however, that those sacred rites should never take place, in the church, in any such case, except with the permission of the ordinary." (Conc. Plen. Balt. II. p. 203.)

356. We subjoin a case of not unfrequent occurrence. A Catholic woman had been married to a Freemason by a Protestant minister. Being seriously taken ill, she sent for the priest, sincerely repented, and received all the sacraments of the Church with great devotion, and died expressing a wish to be buried in a Catholic cemetery. The husband was quite willing, nay, anxious to have the funeral rites celebrated at the Catholic church and in accordance with its ritual, but insisted that the funeral should

be accompanied by the Freemasons in a body both to and from the church; and that the remains should be buried in a profane cemetery, though a Catholic one was attached to the church. Moreover, at the grave itself, the president of the lodge would conduct the final ceremonies according to the Masonic ritual, by an appeal to the Grand Architect of the Universe.

357. In this case three questions are involved, viz.:

1st. Can a deceased Catholic, whose relatives are non-Catholics, but do not possess a lot in another cemetery, be buried from the church, according to the Catholic ritual, if the body is afterward to be interred in a Protestant or profane cemetery?

2d. If this can not be done at the church and in a public manner, may it not take place at the house privately?

3d. Is it allowed to perform Catholic rites, when Freemasons officially attend the funeral?

358. The first must be answered in the negative, according to No. 392 of the Council of Baltimore, as we saw above. The same fathers direct that it can be

permitted only when the non-Catholic surviving relatives "already" possess a lot in some other cemetery; and even then, the sacred rites must be performed privately at the house, but not in the church, unless the pastor should think the contrary to be expedient.

In answer to the second question, we say that the ceremonies of the Church cannot take place either at the house or in the church, but must be simply omitted, as appears from the answer just given.

359. And, thirdly, even though they had already owned a lot, Catholic services could not take place if Freemasons were officially to accompany the body.

Thus the Statutes of the Diocese of Newark declare:

"But if it should happen that a dying man should abjure a secret society, and be reconciled with the Church, we allow the sacred rites to be used in his funeral; with this condition, however, that the members of the lodge should not accompany the funeral in their regalia." (Stat. c. iv. § xiv. p. 48. edit. 1869.)

This is in conformity with the spirit of the Church and the desire of the Fathers of Baltimore.

§ 78. DAYS OF PRAYER AND THANKSGIVING SET APART BY CIVIL AUTHORITY.

360. An excellent rule is laid down by the Fathers of Baltimore in regard to days of prayer and thanksgiving set apart by the civil magistrates in this country.

Generally speaking, these days are strictly observed in Protestant churches by prayer meetings and the inevitable sermon. Herein, they act in conformity with their common custom, dating back to, and resting on, the principles that surrounded their origin.

Protestants of all denominations have ever sought the support of temporal rulers. Without it, few if any of the sects would have enjoyed any other but a short-lived and ephemeral existence. Deprived of the help of God, they solicit the assistance of man.

This was notoriously the case in regard to Lutheranism and the English Reformation. The former was encouraged, sustained, and propagated by the German princes: the latter was originated, kept up

prosperously, and perpetuated by the lust, cruelty, and ambition of Henry VIII., Elizabeth, and the succeeding monarchs.

This prop has lately been taken, in part at least, from under its feet by the disestablishment of the National Church in Ireland; and already are the symptoms of its complete dismemberment and decay but too apparent. Owing its origin, at least in great part, to temporal rulers, Protestantism, in all its countless variations, naturally allowed itself to be swayed by those who stood by its cradle, and to become their obsequious instrument. The throne of Cæsar was substituted by them for the chair of St. Peter.

361. The same may be said, in a greater or less degree, of all other sectarian denominations. Their independence is but a shadow. While, on the one hand, we see the Supreme Pontiff boldly refusing to grant Henry VIII. a divorce from Catharine, his lawful wife, on the other we behold Luther, with entire ease of conscience, permitting the Landgrave Philip of Hesse to simultaneously have two wives.

The Protestant Church has, more or less,

always acknowledged its dependence on the secular power, even in matters of faith and morals, while the Catholic Church has just as strenuously asserted its entire independence in regard to both.

362. When, therefore, secular magistrates take it upon themselves to prescribe days of prayer and thanksgiving, the Church evidently cannot approve of such legislation, or recognize these rights to be inherent in the civil government.

Nor does the Constitution of the United States imply it. Congress, it is explicitly enacted, shall make no laws respecting the free exercise of any religion. Church and State, therefore, are entirely distinct and separate according to our fundamental laws.

The sphere of civil government is secular; its aim is temporal. The Church alone can establish days of worship. It is for this reason that Catholics do not observe those days of prayer and fasting which are prescribed, or rather recommended by our Government, except when they are designated by the ordinary.

It would be a silly, if not malicious infer-

ence, to ascribe this to a want of patriotism or loyalty. The Fathers of Baltimore say:

"If, however, on account of public calamities, it should be expedient to recite prayers in the vernacular, in churches, this should not be done, except by authority of the ordinary; and only such forms of prayer should be used as are prescribed by him. The same holds good in regard to days of thanksgiving, designated by the civil authority. For, on all these days, we wish that the rites of the Church should take place by authority of the bishop only. Politics should never be mentioned from the pulpit." (Conc. Plen. Balt. II. n. 399. p. 206.)

363. Several bishops are accustomed to order divine services to be held in all the churches of their dioceses on such days as are set apart by the Government. In this manner they avoid even the appearance of disloyalty, and at the same time preserve the principle of religious independence and supremacy.

CHAPTER XXVI.

Monks and Nuns.

See Conc. Plen. Balt. II. tit. viii. cap. i. ii. p. 209: Conc. Trid. sess. xxv. cap. v.: Soglia, vol. ii. lib. i. cap. iv. § 30: Bened. XIV. De Synod. Dioc. lib. xiii.: Kenrick, Theol. Mor. tom. i. tract. viii.: Gury, edit. Baller. tom. ii. De Stat. Partic.: Bouvier, De Pœnit.: Reiffenstuel, Jus Can. tom. iii. tit. xxxv. § 2. p. 547 seq. edit. Venet. 1730.

§ 79. REGULARS AS PASTORS OF SOULS.

364. THE Fathers of Baltimore very properly observe that religious communities, in order to be useful, should have permanent and fixed foundations or monasteries, lest, as already Boniface VIII. complained of the religious orders of his time, they should continually be shifting from one place to another.

It was likewise established by the First Provincial Council of Cincinnati that religious could not recede from agreements made with bishops; that regular pastors

could not be removed from churches committed to their care, unless others were substituted with the consent of the ordinary. (Conc. Plen. Balt. II. p. 210.)

This was confirmed by the Fathers of the Second Plenary Council of Baltimore, who added:

"Religious having charge of schools, colleges, and churches, cannot leave them, except after having given six months' notice to the bishop." (Ib. 212.)

365. One of the necessary prerequisites in the erection of monasteries and foundation of religious communities is a sufficient guarantee of support.

It must consist of a safe income, and be capable of supporting at least twelve religious. (Conc. Trid. sess. xxv. c. v.)

In this manner the Church wishes to prevent this holy state from falling into contempt by being exposed to want or misery. For the same reason does she require a sufficient means of support as one of the conditions of ordination to the priesthood.

366. In order to cut off any possible occasion of dispute, the Fathers of Baltimore

advise that an accurate agreement be drawn up in writing between the ordinary and the religious community, in regard to temporal as well as spiritual matters.

367. Priests of a religious order, having charge of souls, are subject to the jurisdiction of the ordinary in the following cases:

1st. In all that concerns the care of souls.

2d. In the administration of the sacraments.

3d. During the episcopal visitation, they fall under the bishop's authority and inspection in those things only that relate to the parochial charge.

4th. In all diocesan and provincial statutes.

5th. In the establishment of religious houses, for which episcopal permission is necessary.

6th. In the ordination of their pupils.

7th. In preaching.

8th. In the exposition of the Blessed Sacrament.

9th. In the approbation of books treating of religious subjects.

10th. In the erection of confraternities.

11th. In the confessions of nuns and sisters having simple vows.

§ 80. NUNS: NATURE OF THEIR VOWS IN THE UNITED STATES.

368. The Fathers of the Second Plenary Council next discuss the nature of religious female communities. The religious state itself may be defined:

"The state of such of the faithful as aspire to Christian perfection, by means of the perpetual vows of obedience, poverty, and chastity, leading a life in community, and approved by the Church." (SÖGL. vol. ii. l. i. c. iv. § 30.)

Solemn vows were formerly considered as pertaining to the essence of the religious state. At present they are no longer essential, simple vows being invested with the same privileges.

369. It may be doubted whether in this country there are any solemn vows. The following answer was given by Rome to the Archbishop of Baltimore:

1st. Vows made by nuns of the Visitation, in monasteries situate in Georgetown,

Mobile, Kaskaskia, St. Louis, and Baltimore, are solemn according to former rescripts of the Holy See.

2d. As regards the law of enclosure, these nuns may use the privileges accorded by the Holy See.

3d. For the future, these nuns shall first make simple vows immediately after their novitiate; and after the lapse of ten years only, shall they be admitted to solemn profession.

4th. The vows of all other nuns in convents already established are simple, except where a rescript from the Holy See has been obtained granting solemn vows.

5th. In all convents to be erected hereafter, the vows will be simple.

370. From this it will be seen that in this country there are but few convents of religious women that have solemn vows; that with the exception of the nuns of the Visitation, above mentioned, all the rest have but simple vows, save in particular cases where special rescripts were obtained. Simple vows are of perpetual force, as far as the religious herself is concerned. Simple vows differ from the solemn as follows: .

1st. They do not entail strict enclosure.

2d. Neither do they incapacitate nuns from personally holding property.

§ 81. LAW OF ENCLOSURE NOT BINDING ON NUNS HAVING BUT SIMPLE VOWS.

371. The law of enclosure not only prohibits men and women from entering convents save in case of necessity, proper permission having previously been obtained; it moreover strictly forbids the nuns or sisters themselves from going outside the enclosure, or leaving the convent, even for the shortest space of time. (BENED. XIV. De Syn. Dioc. lib. xiii. n. 24.)

The transgression of this law is punished with excommunication "ipso facto incurrenda."

372. It may here be asked: Are religious communities of women in this country, having simple vows only, bound to observe enclosure? We answer in the negative. Already Benedict XIV., in the constitution "Quamvis," April 30, 1749, decided that those religious women in England whose chief duty was the education of girls, and

who took the vows of poverty, obedience, and chastity, without observing enclosure, were not religious in the strict sense of the term; that their promises or vows were at most simple vows, and that they should always be under the jurisdiction of the ordinary.

373. Now enclosure was always considered an essential element and effect of solemn vows only. Hence a sufficient means of support was deemed indispensable.

The introduction of enclosure is generally attributed to Boniface VIII.

Kenrick very pertinently says with regard to monks:

"In this country, this law does not, as yet, oblige; for in most of the religious houses, owing to the difficulty of having lay brothers, servant girls are employed; and when 'regular' priests have charge of a parish, women must of necessity often enter the house for the purpose of obtaining spiritual counsel and assistance." (KENR. Theol. Mor. vol. i. tract. viii. p. 235. cap. ii.)

374. And again, the same theologian thus teaches:

"The law of enclosure does not extend to Sisters of Charity and other pious women, who do not take solemn vows." (Ib. p. 238.)

In France also, but simple vows obtain, since the Revolution of 1789, save in some instances where special rescripts have been obtained.

In 1820, the S. Pœnitentiaria stated to the Bishop of Limoges "that solemn vows were those which were received by the Church precisely in that solemn character; which, moreover, perpetually and immutably rendered the person taking such vows —considering the ordinary law, and not supposing a special dispensation of the Pope—incapable of contracting marriage and of acquiring and retaining possession of any property." (See ap. GURY, edit. Ball. tom. ii. tract. De Stat. Part.)

Hence it would seem that in this country, the vows not being solemn, nuns or sisters can possess personal property, not, however, so as to dispose of it licitly without the consent of the superior.

375. Moreover, as enclosure is prescribed for nuns having solemn vows, it is not strictly obligatory in America, where, with few exceptions, vows are simple. Hence the penalty for breach of enclosure is not incurred. Yet, as Kenrick, observes,

"it is very desirable that this most holy discipline should be introduced among us as far as practicable." (L. c. p. 235. Mor. i.)

When it is prescribed by the rules of a community, it should be observed. Yet there is no strict obligation that binds under sin. (GURY.)

376. The Council of Trent enjoins:

"But for no nun after her profession shall it be lawful to go out of her convent, even for a brief period, under any pretext whatever, except for some lawful cause, which is to be approved of by the bishop." (Conc. Trid. Sess. xxv. chap. v.)

And again:

"And it shall not be lawful for any one, of whatsoever birth or condition, sex or age, to enter within the enclosure of a nunnery, without the permission of the bishop or of the superior obtained in writing, under the pain of excommunication to be ipso facto incurred." (Sess. xxv. l. c.)

377. It may be of no little interest to know precisely what is meant by enclosure. Reiffenstuel thus defines it:

"The enclosure of a monastery or convent is that entire space which is surrounded and closed in, by the walls, partitions, or fences of the monastery (or convent); hence whatever is situate within that area is termed enclosure." (NAVARRUS, lib. v. n. 3; SANCHEZ,

lib. vi. Moral. cap. xvii. n. 12.; REIFF. lib. iii. tit. xxxv. § 2. p. 547.)

Again this author says:

"From this (definition of enclosure), we infer that not only the monastery itself, but also the gardens attached to the monastery, used for purposes of recreation, come under the name of enclosure." (REIFF. l. c.)

378. That nuns or religious having but simple vows are not canonically subject to the law of enclosure, seems to be clearly enough stated by Gury, as follows:

"All faithful of either sex entering convents of nuns, as also nuns who admit them, incur excommunication.

"In France this excommunication seems at present to have ceased to be binding, as in that country the religious are no longer nuns in the strict sense of the term, that is, solemnly professed." (GURY, vol. ii. De Cers. app. ii. edit. Ball. p. 705.)

Mark the process of reasoning. Nuns in France are not obliged to observe enclosure because they are no longer bound by solemn vows.

379. This argument, as is evident, applies with equal cogency to all religious communities of females in the United States, excepting some houses of the visitandines, as all have but simple vows. Some of

them, however, were formerly subject to the law of enclosure, as they took solemn vows. Such are, for instance, the Benedictine nuns, and others who are still admitted to solemn profession in Europe.

With regard to these, we ask, are they obliged to observe enclosure by virtue of their rule, that prescribes it?

Before giving a direct reply, we premise,

1st. Generally speaking, the rules of religious institutions do not of themselves bind even sub veniali peccato. This is the common opinion of theologians. (GURY, ed. Ball. vol. ii. cap. i. De Stat. Part. p. 79.)

2d. When a disregard for the rules is combined with contempt of them, this transgression is always more or less sinful. (Ib.)

3d. Trangressions against the vows may be grievously sinful or but venially. (Ib. l. c.)

We now answer directly as follows:

1st. In the United States, religious women who have but simple vows do not fall under the law of enclosure as prescribed by the canons which attach the obligation to solemn vows only.

2d. When the rules of such religious

communities nevertheless prescribe enclosure, the law cannot bind in the strict sense of the term, and can oblige only sub levi, as other rules do. Neither do we think, in consequence, that the bishop's permission is necessary to be able to dispense with the law.

380. We sum up:

1st. All religious communities of females in America have but simple vows, except the visitandines in the places mentioned, and where a special papal rescript has been secured.

2d. The result of this is that sisters retain the right of property.

3d. They are not bound, at least canonically, by the law of enclosure, though it is desirable that they should observe it as far as possible.

Such are, ordinarily, the effects of simple vows. No one, however, can for a moment entertain the slightest doubt that the Holy See could make absolute poverty and enclosure obligatory on nuns not having solemn vows.

§ 82. CONFESSIONS OF NUNS AND SISTERS.

381. We pass to the question of jurisdiction over religious communities of women. We ask:

1st. Is a special approbation needed to hear the confessions of Sisters of Charity, and other religious females, having but simple vows?

2d. Have pastors, whose schools are conducted by the above religious, ordinary jurisdiction to hear their confessions?

382. We answer the first in the words of Kenrick:

"Sisters of Charity, and other communities of religious women, in which but simple vows are taken, as also Sisters of the 'Sacred Heart,' are comprised within the same law, viz. that a special approbation of the bishop is requisite to hear the confessions of these religious women." (KENR. Theol. Mor. ii. tract. De Pœnit. cap. viii. § 2.)

Again, these communities are either exempted from, or subject to, the jurisdiction of bishops. In the first case, the "regular" prelates present or designate the confessor, to be approved or accepted by the ordinary;

in the second case, the bishop alone both selects and approves him.

Three years is the term fixed for one confessor; afterward another should be appointed.

"But in this country," says Kenrick, "the custom exists of appointing such confessors without any limit of time." (KENR. l. c. p. 216.)

383. Moreover, the same author informs us,

"These religious communities may for sufficient reasons refuse a confessor appointed by the bishop. And bishops should not force upon them any confessor against whom they reasonably object, lest the salvation of souls become imperilled." (KENR. l. c.)

"Nor should their confessions be heard in the sacristy, or in any other private place, but in the church." (KENR. ib.)

384. It might be said that Sisters of Charity and other religious women, having but simple vows, are by no means nuns in the proper sense of the term, and that therefore, according to the common law of the Church, no special approbation is essential with regard to them.

This objection might hold, if no particular legislation existed to the contrary. But

in fact, various decrees of the Holy See make the special approbation necessary, as Kenrick proves. Nor will any one deny that the Roman Pontiff or the ordinary of the diocese has the right of restricting the jurisdiction of confessors, even where the common law does not.

385. As regards the confessions of sisters who teach in parochial schools, and who are attached to parishes, we hold that the respective pastors are their confessors, "jure quidem ordinario."

Besides, in no supposition do they need, it seems to us, an explicit approbation, as it is of necessity already implied in the permission which the ordinary gives to pastors, namely, to confer on the sisters the charge of the parochial schools. A parallel case is presented in the appointment of pastors. Priests upon whom parochial charges are conferred require no explicit approbation for confessions, the very collation to a parish being an implicit approbation, as the office of pastor implies that of confessor.

Yet it may be advisable in some cases, for the sake of greater tranquillity of con-

science, explicitly to obtain faculties, even in the above instances.

The following from Bouvier will perhaps be conducive to the better understanding of the present subject:

"As approbation depends entirely upon the free will of the bishop or vicar general, it may be limited as to place, time, persons, and sins; hence those that are approved for men only, cannot hear women, nor validly absolve them." (BOUVIER. Tract. De Pœnit. art. ii. § v.)

In many parts of Europe approbation for men is given first; that for women, some time afterward only.

386. The necessity of a special approbation for nuns is derived from these sources:

1st. From the constitution of Benedict XIV. given 1726.

2d. From the common practice of the Church.

3d. From various decrees of the Holy See, which enjoin:

(*a*) That confessions of nuns heard without a special approbation are null and void.

(*b*) That the permission of hearing women does not extend to nuns.

(*c*) That special permission is necessary for each convent; as approbation for one convent does not extend to any other. (BOUVIER, l. c. p. 459. tom. iii.)

Again, we quote from the same author:

"By nuns, such only as live in enclosure are here meant; and not those who are not bound to observe enclosure, and who are commonly called Sisters of Charity. It is certain, however, that bishops can ordain that a special approbation is also necessary to hear their confessions." (BOUVIER, l. c.)

387. We ask: Can the confessions of the above religious women be heard in the chapels generally attached to their houses or missions? At first sight it would not appear allowable to do this, as it is strictly inhibited to hear confessions of Sisters of Charity and other religious communities in any other place save in the church.

Yet we think that the chapels of these religious come under the denomination of churches. As a general rule, they are public oratories, free access to all being given. Custom, moreover, sanctions this practice. With but rare exceptions, we believe, the confessions of sisters are heard in their chapels throughout the United States.

§ 83. EXTRAORDINARY CONFESSORS OF NUNS.

388. The Fathers of the Council of Trent thus decree:

"But besides the ordinary confessor, the bishop and other superiors shall twice or thrice a year offer them an extraordinary one, whose duty it shall be to hear the confessions of all nuns." (Sess. xxv. ch. x. on Ref.)

389. We cannot better elucidate this matter than by analyzing the constitution "Pastoralis Curæ" of Benedict XIV., given Aug. 5, 1748. (See BULLAR. Bened. XIV. tom. ii. edit. Prati, 1846.) The following are its main points:

1st. Experience teaches that it is necessary for the tranquillity of conscience of religious women, to give them an extraordinary confessor several times a year.

2d. Bishops and regular prelates should promptly proffer these extraordinary confessors to nuns.

3d. All the nuns are not obliged to confess their sins to the extraordinary confessor; but all of them are bound to present themselves to him, in order not to

render this occasion odious to those who wish to avail themselves of it.

4th. Though the Council of Trent made the law in favor of cloistered nuns, yet is it also to be extended to all women living in community, even without observing enclosure; as also to all communities of women or girls residing in convents or academies, and having but one confessor assigned them.

In fact, this law was made in favor of all communities for whom but one confessor was set apart. This being the principal reason for the enactment of the law, it extends to all cases where the above persons living in common have but one confessor.

5th. The next question put by Benedict XIV. is:

To whom belongs the privilege of deputing the extraordinary confessor?

It is thus answered by himself: Easy of solution is this query; for the designation of the extraordinary can, regularly speaking, belong to him only whose office it is to appoint the ordinary confessor. Hence the bishop, who gives the latter to nuns, is bound, according to the decree of Trent, to

offer them two or three times a year an extraordinary confessor.

This holds also of regular prelates, who have the faculty of providing confessors for nuns immediately subject to them.

6th. Besides, in case of sickness this privilege should be freely given to nuns.

7th. In like manner, in case nuns, who have an aversion for the ordinary confessor, should refuse to confess to him, even then the bishop or regular prelate should not hesitate to appoint a special confessor for them, whenever they reasonably request this favor. An exception is to be made then only, when the petition is manifestly whimsical.

8th. Again, members of these communities frequently may not refuse to go to the ordinary confessor, for whom they have no dislike whatever, yet they may wish to have a different confessor oftener than is prescribed by the Council of Trent; and even in this case, bishops should not be slow to bestow this favor.

9th. As a general rule, the ordinary confessors of nuns, subject to bishops, are selected from the secular clergy, and the extraordinary ones from the regular priesthood.

10th. The faculties of the ordinary confessor are in abeyance while the extraordinary exercises his office. The latter should forthwith leave the convent when all the confessions have been heard.

390. This is a brief summary of the constitution "Pastoralis Curæ." We may now venture to apply these various points to this country. We ask, therefore:

1st. To whom appertains the appointment of extraordinary confessors for nuns, in the United States?

2d. How often should they be offered to nuns?

In answer to the first question, we say, that, with but few exceptions, the appointment of extraordinary confessors belongs to bishops, since the various religious communities of women are generally subject to them. This has reference to Sisters of Charity, Sisters of the Sacred Heart, of Notre Dame, of St. Joseph, and other kindred communities. But few of them are subject to regular prelates. Kenrick says:

"A special approbation of the bishop is necessary to hear the confessions of nuns, though they be exempt-

ed from the jurisdiction of ordinaries; for this was decreed by Clement X., who directed that regulars or monks require episcopal approbation also with regard to nuns subject to themselves; and that those who are approved for one monastery should not be considered approved for any other; that, moreover, extraordinary confessors must obtain special approbation as often as they may be deputed to that office." (KENR. Mor. vol. ii. tract. xviii. De Pœnit. p. 216.)

Again, this author says:

"Confessors of exempted nuns are presented by their own prelates and approved by bishops: other confessors are appointed by bishops themselves." (Ib.)

Gury maintains the same:

"Nuns cannot confess except to a priest especially approved for them by bishops, though they be exempted from episcopal jurisdiction, and subject to regulars of their own order." (GURY, tom. ii. p. 362. edit. Baller. Romæ, 1869.)

Father Ballerini says:

"The offering of extraordinary confessors belongs to those whose duty it is to assign the ordinary ones. Now, some nuns are subject to prelates of monks; others, however, to the bishop: for the former the regular prelate will depute the confessors; but he shall select only such as are specially set apart for nuns by the ordinary of the place: for the latter the bishop will appoint the confessors." (Ap. GURY, Mor. vol. ii. p. 362, note *a*.)

391. From the foregoing it follows:

1st. That confessors, whether ordinary or extraordinary, of religious women and nuns subject to bishops, are appointed by the ordinary.

2d. That the ordinary as well as extraordinary confessors of nuns and other religious women subject to regular prelates, are designated or appointed by those regular prelates and superiors, and presented by them to bishops who approve them, or consent to their appointment.

This approbation is essential to the validity of confessions.

3d. In no case have regular prelates the power of giving faculties to hear the confessions of nuns subject to themselves independently of episcopal permission.

In regard to male members of their own institute, the case is entirely different. For, "regular" confessors hold immediately of their superiors, not of bishops, faculties to absolve members of their own order, without limit to time or place.

This, as we have seen, does not extend to nuns, even when subject to them. Nor does this privilege apply to confessions of

secular persons. This law is thus laid down by Kenrick:

"It is evident from the above words of the Council of Trent, that regulars cannot hear the confessions of lay people, even of priests, unless they are approved by the bishop, or have a parochial benefice." (KENR. Mor. vol. ii. p. 214.)

Of course, regulars do not require episcopal permission or faculties to absolve members of their own institute: they obtain them from their immediate superiors. This holds good of members of their order, wherever they may reside.

392. In answer to the second question, we say, that in this country, confessors extraordinary should be given to nuns as frequently as elsewhere.

Case.—Cayus, a parish priest, is engaged on Saturday afternoon in hearing the confessions of his people. Among other penitents that present themselves, he discovers a nun belonging to a religious community of a neighboring place. Cayus is somewhat perplexed as to whether he has the faculty of absolving her. Yet, as he is approved for "sisters" who are teaching in his parochial schools, he makes up his

mind that he can absolve all nuns that may come to him, and accordingly gives absolution to his penitent. We ask, therefore, was the absolution valid?

393. At first sight a negative answer suggests itself to us. In fact, Clement X. ordained that confessors approved for one convent should not be considered approved for any other; that extraordinary confessors have need of special approbation as often as they may be deputed for that office. (Ap. KENR. Theol. Mor. vol. ii. p. 216.)

From this ordinance, it would seem that pastors, who have permission to hear sisters teaching their schools, cannot absolve nuns or sisters belonging to other places.

394. Yet a close investigation of the matter inclines us to embrace the opposite opinion. We think that pastors and confessors, approved for nuns and sisters having charge of their parochial schools, have unrestricted faculties to absolve all such religious women, of whatever order they may be members, or from whatever place they may come. We believe, therefore,

that Cayus validly imparted absolution in the case.

For it must be borne in mind that the Tridentine decree enjoining that extraordinary confessors should be offered twice or thrice a year to nuns, was chiefly though not exclusively made in favor of "cloistered" nuns, who consequently were supposed to be unable, at times, to leave the convent and confess to another priest.

395. But the case of non-cloistered nuns and sisters is quite different. They go out of their houses not unfrequently, either to see their neighboring sisters, or to attend to matters of business in other places. Their opportunities of confessing to other priests are therefore numerous. Now, the law of Trent, far from inhibiting this liberty with regard to choosing confessors, sought precisely to attain this object by enacting that extraordinary confessors should be given several times a year to nuns who, because of enclosure, were unable to select any but the ordinary confessor.

Analogy, therefore, leads us to infer that uncloistered sisters, when outside their

convents or places of residence, may confess to any priest approved for nuns.

396. Besides, this reasoning appears to be confirmed by the general opinion of theologians, that the law which requires that nuns shall confess only to confessors especially appointed for them, must be understood as applying to nuns only when actually in the convent; that those who happen to be outside of them can be absolved by any confessor, even by one who is not especially approved for nuns. (See GURY, vol. ii. p. 364.)

397. Another question may here present itself. Are pastors who have permission to hear nuns and sisters, teaching their parochial schools and attached to the parish, also allowed to absolve such religious women throughout the diocese?

We answer in the affirmative. This, at any rate, appears to be customary in some dioceses. Hence, bishops, it would seem, approving confessors for nuns, place no limit to such jurisdiction. The custom of our country may safely be followed.

Even with regard to extraordinary confessors, it would appear, no special appoint-

ment of the bishop is necessary. For we are informed that Sisters of Charity and other religious women have not unfrequently themselves invited confessors, both ordinary and extraordinary, to hear their confessions.

From what has been said, it is evident that in the United States no fixed ecclesiastical discipline has as yet been adopted in this matter. It were desirable, indeed, that bishops should assert and exercise their full rights on this head.

They alone, and not the mother superior of any community, have the right as well as duty to appoint the extraordinary and ordinary confessor.

Would it not also be appropriate officially to inform the respective pastors of the appointment of the extraordinary confessor, when it concerns nuns under their charge? This is done in Europe. We are of opinion that pastors would more cheerfully receive notice of such appointments from the bishop than from the sisters.

CHAPTER XXVII.

On Books and Newspapers.

See Walter, Jus Can. p. 338: Devoti Instit. Can. lib. iii. tit. vii. § vi. not. 2.: Zallwein, Princip. Juris Eccl. tom. i. quæst. iv. c. ii.

§ 84. PERMISSION OF PRINTING BOOKS: LAW OF THE INDEX.

398. The Fathers of Baltimore say:

"Now, according to the law of the Church, books treating of religion and divine worship should not be printed without the approbation of the ordinary: if, however, they are published without the consent or even against the will of the bishop, we forbid the reading them." (Conc. Plen. Balt. II. p. 254.)

Again, they renew the decree of the First Council of Baltimore, which is as follows:

"It is advisable that bishops should select several priests of sound theological learning, in each diocese, to whose examination, prayer books, and others treating of religion, should be submitted, before being approved and recommended to the faithful by the ordinary." (L. c.)

This decree was confirmed by the Fathers of the Second Plenary Council, as follows:

"This decree we confirm, and furthermore extend so that it shall bind all bishops in whose dioceses Catholic printing establishments exist." (P. 255.)

399. It may then be asked, does the law of the Sacred Index in regard to heretical books, and such as treat of religion in general, hold in this country?

Again: Is it necessary that books treating of faith and morals should be submitted to the judgment of the ordinary?

There is a natural obligation of avoiding, as far as is morally possible, anything that leads to sin, or even to the danger of committing it. To this natural and universal law is added a positive law, by the Church, determining and specifying what is comprised in the former.

Bad books and writings have been set down by her as being among the most dangerous occasions of vice. Her office, then, as the guardian of the flock of Christ, clearly invests her with the right of warning the faithful against such books, and of forbidding their perusal even under pain of incurring ecclesiastical censures. A

list or index of such works is drawn up by a body of cardinals and learned theologians. The rules to be observed by this congregation or committee are laid down by Benedict XIV. (Constit. Sollicita, 1753, BULLAR. tom. iii. p. 110.)

400. They are as follows:

The book in question is first given to one of the consulters or examiners, who carefully and attentively reads it, writing down his criticism, and pointing out the places and pages that seem to contain any errors. Then it is sent, together with these notes, to each of the other examiners, in turn, who finally decide in a general meeting of all the examiners, held every Monday in the rooms of the Sacred Office, what censure should be attached to the book. This censure, together with the book and the various opinions of the examiners, is transmitted to the cardinals, who definitively settle the entire affair, in their meetings held each Wednesday, in the cloister of the Dominicans, called "Sopra la Minerva."

And lastly, the assessor or secretary of the Sacred Office reports all these trans-

actions to the Supreme Pontiff for final adjudication.

401. When, however, judgment is to be passed on the book of a Catholic writer, the mode of procedure is this:

When one member of the board of examiners thinks that the book ought to be condemned, it will then be examined a second time by a different person, who is entirely ignorant of the name and opinion of the first examiner: if they agree, their judgment will be reviewed in a general meeting of cardinals deputed for this charge; and finally their conclusion is to be confirmed by the Pope.

Should they, however, disagree among themselves, a third examiner will revise the book until a concurrent opinion is reached.

402. The committee or congregation of cardinals intrusted with this matter was instituted by Pope Paul IV., and is called "Congregation of the Sacred Office," or also "the Roman Universal Inquisition."

But as the object of this congregation was to investigate heresy in all its countless ramifications, its labors soon became too onerous, and Pius V. found it neces-

sary to establish a new committee of cardinals and theologians, whose special and almost sole end was to examine books that were to be either proscribed, emended, or permitted. To this latter committee the examination of books is at present almost exclusively referred. The rules by which it is governed do not materially differ from those of the Sacred Inquisition, which we have given. As this committee does not meet every week, its secretary receives all denunciations of books. It is his duty diligently to inquire of the referee why a particular book should be prohibited; he then attentively peruses the work, in order to ascertain the correctness of the charges, associating with himself two other examiners, appointed either by the cardinals or the Pope. If in their judgment the book is deserving of censure, another examiner who is specially skilled in the particular branch of which the work treats will be appointed in the same manner as the other. His duty is carefully to examine the book again, noting the pages that contain objectionable matter. A general meeting of these councillors then takes

place: this is done regularly once a month. No less than six of them should be present. The subject is again discussed, and the conclusion arrived at is communicated to the cardinals on the committee.

These finally debate upon the question again, and decide on the matter, in a general meeting: their decision is reported to the Supreme Pontiff for final action, by the secretary of the committee.

The examiners are selected from the secular and regular clergy, from which those are chosen who are well versed in the various branches of the sciences that are treated of in those books. (See BENEDICT XIV., Bullar. A. D. 1753, July 9, Constit. Sollicita.)

From this brief summary it will be seen how guarded is the Church in her judgment on works suspected of heresy. We may add that the inability of observing these cautious measures in this country, owing to the scarcity of priests, seems to us to be one of the reasons why the law is in abeyance throughout the United States.

403. The object of this law is thus stated by the Fathers of Trent:

"The Sacred and Holy Ecumenical and General Synod of Trent . . . hath especially in view to restore at length to its native purity and splendor the doctrine of the Catholic faith, which is in many places defiled and obscured by the conflicting opinions of many who differ from each other; to bring back to a better method of life, manners which have divaricated from ancient usage; and to turn the heart of the fathers unto the children, and the heart of the children unto the fathers."

"Whereas then, first of all, it has noticed that the number of suspected and pernicious books, wherein an impure doctrine is contained, and is disseminated far and wide, has in these days increased beyond measure, which indeed has been the cause that many censures have been, out of a godly zeal, published, . . . and yet that no salutary remedy has availed against so great and pernicious a disorder: It hath thought good that fathers specially chosen for this inquiry should carefully consider what ought to be done, in the matter of censures and of books, and also in due time to report thereon to this Holy Synod." (Conc. Trid. sess. xviii.)

404. The right of condemning heretical books was called in question by the Jansenists in their well-known distinction between "right" and "fact" (jus et factum). The Church, they contended, might declare that a certain doctrine was contrary to faith and morals; but whether such a particular

teaching was contained in this or that book, or conveyed in the precise words of some author, was a matter of fact, that did not at all come within the jurisdiction of the Church.

That such an opinion must render the magisterial office of the Church simply nugatory, and disable her from warning the faithful of danger, is but too apparent. Hence such a distinction must be considered a groundless Jansenistic invention, or rather quibble. (See WALT. Jus Can. p. 338; Devoti Inst. Can. l. iv. tit. vii. § vi. not. 2. 3; ZALLW. Princ. Juris. Eccl. tom. i. quæst. iv. c. ii.)

405. Another part of this law is that all books treating of religious subjects, even when orthodox, should be submitted to ecclesiastical authority before being published. In America, bishops apply this to prayer books, catechisms, and Bibles only, and but exceptionally, if at all, to other works treating on religious matters.

They cannot as a general rule superintend this matter. Their own time is taken up by their manifold and pressing episcopal duties. Nor are there priests enough,

or means sufficient to sustain such as could be specially deputed to revise and correct books. Hence it would seem that, even independently of any positive law, this enactment is of no practical consequence in this country. The Council of Trent enjoins that the Sacred Scriptures, and other books treating of religious subjects and issued anonymously, should not be printed or read without previously being examined and approved by the ordinary. (Sess. iv. Decr. de Usu et Edit. Libr. Sacr.)

This of course obtains in its full extent wherever the necessary conditions can be complied with, which is generally the case all over Europe.

§ 85. IS THE LAW OF THE SACRED INDEX BINDING IN THIS COUNTRY?

406. We now proceed a step farther, and ask: Does the law of the Index bind also in this country? We put this question, prescinding of course entirely from the natural obligation of not reading such books without necessity. This must always remain

in force, as coming from the dictates of nature itself.

We repeat then, does the positive obligation exist here?

At first sight we should feel inclined to answer in the affirmative. Thus, in the "Formula of Faculties" given by bishops to priests, by virtue of faculties delegated by the Pope, among others is the "faculty of keeping and reading, not, however, of giving to others, books of heretics and infidels, treating of their pernicious principles, for the purpose of refuting them by word or writing." (Formula, n. 12.)

This seems clearly to imply the obligation of the law in this country.

407. Yet, while fully admitting theoretically the force of this sanction, we must at the same time concede that practically it has ceased to be in vigor; at least, nowhere do we see it enforced or observed.

A threefold reason seems to justify this abeyance of the law:

1st. The practical impossibility of examining and revising all the books in question.

2d. The continual intercourse of our

people with non-Catholics; the necessity of reading their works in order to answer the specious fallacies so persistently advanced by them.

3d. The great difficulty that would be found in executing the penalties and ecclesiastical censures of the Church for the transgression of this law. Kenrick says :

"It is asked whether the rules of the Index are in force all over the world. Although several popes have declared them to be obligatory on all the faithful throughout the whole world, yet in many places, where heretics live mixed up with Catholics, the rigor of these rules must be considered as having been relaxed through the benignity and toleration of the Sovereign Pontiff, lest souls should otherwise be imperilled. This also P. Philip a Carboneano seems to acknowledge in these words : 'If anywhere, out of indulgence and kindness of the Apostolic See, these rules of the Index are not received into practice, but one thing can be inferred, namely, that those who read prohibited books do not incur the censures of the Church.'

"Neither," continues Kenrick, "is it always a mortal sin to read them ; for, although the Church is opposed to it, yet if the prohibitions contained in the bull Cœna Domini, and in the rules of the Index, be not practically received among us, which seems certain, I do not know by what universal law the reading of such books is known to be prohibited." (KENR. Mor. vol. ii. tract. xiii. c. v. p. 52. 53.)

408. It is certain then, according to Kenrick, that the rules of the Index do not bind in this country.

We think, however, that it is safe to say that the natural prohibition still holds with regard to perhaps the greatest number of Catholic laymen, who are not sufficiently instructed to detect the poison latent in such works. Pastors of souls, therefore, cannot too severely inveigh against the reading of bad books, periodicals, and newspapers.

409. To sum up, there are two things to be distinguished, viz.:

1st. The reading of prohibited books.

2d. The printing or publishing of them, as well as all other works treating of religious matters, without the approbation of the ordinary.

As to the first, the natural law must not be confounded with the ecclesiastical law, though the latter springs from and is based upon the former. The natural obligation remains intact in this country; the ecclesiastical may be of effect theoretically, but not practically. Both custom and the tacit consent of the bishops have abolished it.

As to the second, custom as well as the positive decrees of Baltimore have greatly restricted its sphere. Editions of the Bible, catechisms, and prayer books must be submitted to the judgment of the ordinary; as to other books, says Kenrick, it is now certain that the law does not obtain in America.

It is to be hoped, however, that ere long the number of priests will be large enough to enable bishops exclusively to depute some of them for this affair.

CHAPTER XXVIII.

Censures.

See Kenrick, Mor. vol. ii. tract. xxii. p. 345 seq.: Walter, Jus Can. lib. iv. c. iii. § 174. p. 342 seq.: Bouvier, tom. vi. tract. De Censuris, p. 503 seq.: Blackstone's Comment. bk. iii. ch. v.: Soglia, vol. ii. and vol. i. p. 139 seq.

§ 86. ECCLESIASTICAL JUDICATURE IN GENERAL.

410. We quote with pleasure, from the "Year of Preparation," as follows:

"As respects discipline, the Church of France does not resemble that of other Catholic countries, and perhaps there is none other which looks to profit more largely by the decisions of the coming Council (Vatican I.). The state of the French clergy ever since the Concordat with Napoleon I., in 1802, has been altogether exceptional, not only in their relations with a Government which has taken the organic Articles as its rule, but as respects internal discipline. Canon law is practically non-existent in France. Some canonists indeed there are, perhaps a dozen, possibly twenty—but speaking generally, the science as well as the practice has disappeared. This is a state of

things which it is well to face without exaggerating its inconveniences, but at the same time without concealing them. The abolition of all benefices, the confiscation of ecclesiastical property, the assignment in compensation of a salary paid by the State to the clergy—such have been the chief causes of the oblivion into which the study of canon law has fallen in France. The study declined from the moment that the law itself ceased to be practically applicable. On the other hand, the administration of episcopal authority over the clergy is almost exclusively effected by means of decisions ex informata conscientia. The numerous appeals to Rome, of late years, bear witness to this fact; and on many of these occasions the proper canonical forms have been omitted, simply from ignorance of them. That in the present state of France there should be a disposition to avoid—as for instance, in the case of any scandal, or of refractory conduct on the part of any member of the clergy—a legal judgment involving a certain amount of publicity, however restricted, we can easily understand. The affair would at once be taken up by all the irreligious journals, to be blazoned abroad and misrepresented, as a matter of course, in order to satisfy the greedy curiosity of a million of readers. The decision ex informata conscientia here presents itself as a resource possessing obvious advantages.

"It is certain, however, that it excites mistrust amongst the inferior clergy, and opens the door to multiplied recriminations. The same may be said of the removability of those priests who in France are called Desservants or Succursalistes, and who can be

transferred from one place to another ad nutum episcopi. Complaints from this cause are no less frequent. What may be anticipated with respect to the decision of the Council regarding canon law? Will it reinforce the disciplinary decrees of the Council of Trent? or will it introduce, and if so, to what extent, modifications adapted to present circumstances?

"These questions, we believe, form a very special subject of the consideration and study of the French bishops, who, it must be observed, as well as the clergy of the second order, deeply lament the neglect into which the study of the canon law has fallen in France." (The Year of Preparation for the Vatican Council, chap. ix. p. 90. 91, London, Burns, Oates & Co., publishers, 1869.)

411. These lines, from the pen of Herbert Vaughan and other eminent English scholars, it would seem, are applicable with equal, if not greater cogency, to our ecclesiastical status in the United States.

Canon law appears to be almost forgotten, both as a science and as a practical rule of discipline. Its forms are not unfrequently set aside, simply because they are unknown.

Again, bishops often proceed against priests ex informata conscientia. While in some exceptional cases this may prevent publicity, it has, in a considerable number of instances, brought about the reverse.

Priests who had been condemned without any legal form of judgment, and who in consequence thought that injustice had been done them, appealed to the public for redress, by means of the press, and even civil courts.

412. The movableness of pastors is here, as in France, a fruitful source of complaint. In France, however, canonically appointed parish priests are not movable, while in America no exception is made. The grievance is itself the result of an evil, which in our humble judgment is far graver than the former.

We mean the total absence or want of any fixed and canonical mode of appointing and promoting pastors. No canonical test either of appointment or promotion seems to exist.

Complaints are made by virtuous, learned, and well-deserving priests, that appointments to excellent parishes are made at hap-hazard; that learning, virtue, and missionary services can give no claim to promotion; that strange priests, on coming from other countries, are immediately put in charge of very important parishes, with-

out even the formality of a previous examination, while the clergymen that are brought up in the diocese, and have discharged laborious duties in it, are left in charge of country missions.

These complaints may be well worthy the serious consideration of our bishops, than whom none else, certainly, has the welfare of the Church more at heart.

413. We shall now inquire chiefly into the nature of ecclesiastical punishments, and see how far they are applicable to this country.

The Church is a society, at once perfect, supreme, and independent. Hence she possesses a threefold power, viz., first, the legislative power, or that of making laws; secondly, the judicial, or that of defining and applying laws; thirdly, the coercive, or the power of compelling rebellious members to obedience.

Wicliff, Huss, Luther, and the other Reformers in general contended that the Church had but a vague, indefinite, and indefinable phantom of authority, wholly restricted to the spiritual order. Against her coercive power, more than against any-

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thing else, they directed their envenomed shafts.

Yet, is it not reasonable that the Church, as a perfect society, should be endowed with such authority as will enable her to punish the insubordinate and repress the lawless?

We do not here maintain that corporal punishments are legitimately inflicted by the Church.

The affirmative opinion on this question was held by John de Discastillo (see tract. De Cens. disp. i.); by Pirhingh. (see Jus Eccl. lib. 5. sec. 3. n. 92); Bellarmin (lib. 3. De Laicis, cap. 21. 22.)

The negative opinion is maintained by Kenrick. (See Theol. Dogm. lib. i. tract ii. De Eccl. cap. xxii. De Potest. Eccl. p. 262.)

It is now generally held that the Church can inflict light corporal punishments, such as imprisonment in monasteries, and other chastisements which are not followed by the shedding of blood. (See SOGL. tom. i. lib. i. p. 154.)

414. The coercive power of the Church is inherent in the Pope; in bishops within their respective dioceses; in archbishops

within their archdioceses, and, during the visitation, all over their provinces, as also on appeals to their tribunal; in bishops elect, and confirmed by the Holy See, though not yet consecrated; also in vicars general; in generals, provincials, and superiors of religious houses; in cathedral chapters, sede vacante; in administrators of dioceses. (BOUVIER, tom. vi. tract. De Cens.)

415. It may further be asked, what causes fall under courts of ecclesiastical jurisdiction? Blackstone admits,

"That from an early date, it soon became a maxim of Papal policy, that ecclesiastical persons and causes should be subject to ecclesiastical jurisdiction solely." (BLACKST. Comment. bk. iii. chap. v.)

This state of things continued in England even after its separation from the Church. There the ecclesiastical forum was composed of the following tribunals:

1st. The Archdeacon's Court; an appeal lies from it to the bishop's court.

2d. The Consistory Court of every bishop, which was held in the cathedral chapter; from its sentence an appeal lies to the archbishop of the province.

3d. The Court of Arches, which is a

court of appeal to the Archbishop of Canterbury.

4th. Court of Peculiars, having jurisdiction in cases not comprised in the other courts.

5th. Prerogative Court, which settles all questions with regard to testaments.

6th. The King's Court of Appeal, to which all finals appeals are made. (BLACKSTONE'S Comment. l. c.)

We see that this is materially the old established form of judicature so long observed in the Catholic Church. This difference, however, intervenes between the present ecclesiastical judiciary of England and Rome, that the king is head of the former, while the successor of St. Peter is supreme judge of the latter.

§ 87. CAUSES SUBJECT TO ECCLESIASTICAL TRIBUNALS: MODE OF JUDICIAL PROCEEDINGS IN THE UNITED STATES.

416. The causes that are subject to ecclesiastical tribunals are the following:

1st. All matters of faith and morals.

2d. The administration of the sacra-

ments; doubts with regard to their substance; sacred rites, and the general manner of administering sacraments.

3d. Impediments of marriage, though, as Kenrick only too truthfully observes, bishops are little troubled about such matters in this country, as all quarrels of this sort are forthwith carried before the civil tribunals, and thus the internal dissensions of families are made public through the press, to the scandal of the entire community.

4th. Crimes of ecclesiastics, committed against the law of God or the Church, are by divine right subject to the ecclesiastical forum.

417. The mode of procedure in criminal causes of ecclesiastics in America, as laid down by the Council of St. Louis, is as follows:

"The bishop or vicar general by episcopal commission chooses two members of the bishop's council, changing them from time to time, who shall assist the bishop or vicar general in trying the cause, which should be done in presence of a notary of the bishop.

"Both councillors shall have but one vote. If both members differ in opinion with the bishop or vicar general, the bishop shall select a third councillor, and the case shall be decided by his vote or that of the

majority. If even then the votes of all the councillors should disagree with that of the bishop, the matter should be referred to the metropolitan.

"Both civil and criminal causes brought against ecclesiastics, either by other ecclesiastics or by laymen, should be submitted to and adjudged by the bishop." (KENR. Theol. Mor. vol. ii. p. 345.) *

Moreover, as this author says:

"All matters having reference to parochial duties, and all questions of church property, should be adjudicated upon by the ecclesiastical tribunal." (KENR. l. c.)

418. Again, Kenrick says:

"Whatever may be said in regard to the form of procedure of ecclesiastical tribunals, can scarcely have any other importance in this country than to demonstrate how carefully the Church administers justice wherever she is allowed by the civil law to proceed in a solemn manner. For the rest, it is ardently to be hoped for, that bishops will adhere to this form of judicature as far as circumstances may allow. From the fact that causes are not unfrequently disposed of in a single-handed manner, and without due process of law, the numerous mistakes that have been committed may easily be explained." (KENR. l. c.)

Again:

"Sentences pronounced against ecclesiastics with-

* See Appendix IX., where it will be found that the decree of St. Louis is framed on the model of the decree of C. of Trent, sess. xxv. ch. vi. on Ref.

out due form of law, frequently originate envy and discontent among the people." (KENR. ib.)

At another time, this author says:

"There can be no doubt, that a sentence of law will carry with it greater weight in proportion as order, maturity, and calmness of judgment prevail during the investigation, especially when priests of ripe age and mature intellect are associated with the bishop, and when opportunity is afforded the defendant of vindicating his conduct. During the visitation of the diocese, and in those matters that pertain to the correction of morals, even when not on the visitation, the bishop acts as delegate of the Apostolic See." (Conc. Trid. sess. xxiv. cap. x. De Ref. apud KENR. l. c.)

"But this faculty applies particularly to clerical incontinency. In such cases the bishop may always proceed 'sine strepitu et figura judiciaria,' simply examining the truth of the statement or fact." (KENR. Mor. vol. ii. tract. xxii. cap. ii. p. 352.)

419. From this we infer, that although bishops in this country may not always be able to follow the canonical mode of procedure in the strictest sense of the term, yet is it incumbent on them, according to the decrees both of provincial and national councils, to adhere to the normal judiciary form of the Church, and but rarely to admit of exceptions to this rule.

§ 88. NORMAL CONDITION OF ECCLESIASTICAL JUDICATURE.

420. It may not be altogether void of interest here to examine into the provisions of the normal and common law of the Church, on this point.

In every trial, whether civil or ecclesiastical, there must be plaintiff, defendant, and judge. The first of these institutes proceedings against the second, by means of his complaint, set forth in a declaration, termed in the civil court "affidavit"—and libellus or statement in the ecclesiastical forum.

The defendant, that is, he against whom the allegations are advanced, either admits or denies the statements contained in the "affidavit."

If he admits them, sentence may be pronounced forthwith. If he denies them, the law-suit begins, that is, testimony is taken.*

It then becomes the duty of the plaintiff to prove by unexceptionable testimony the truth of his accusations.

* This is termed "contestatio litis."

421. The body of proof may consist of these:

1st. An oral admission on the part of defendant.

2d. Ocular witnesses.

3d. Instruments, such as documents either of a public or private nature.

When the complainant has set forth and sustained his charges, it becomes the duty of defendant to respond to them.

The judge finally decides the case according to the arguments adduced by either side.

422. We add a few words on each of these persons.

The plaintiff, as we have seen, makes the charges. Now, in ecclesiastical causes, accusations are frequently made by laymen. It may not be out of place, therefore, to quote the saying of St. Paul:

"Against the priest, receive not an accusation, but under two or three witnesses." (1 Tim. v. 19.)

Great care should be taken not to listen too readily to complaints advanced by the people. Malice and insubordination but too often prompt the most unjust

and groundless allegations of parishioners against their pastor.

An instance of this is given in the life of the saintly Prince Gallitzin. Though his career was one of continual mortification and self-denial, yet accusers were not wanting who misconstrued his best actions, and laid grave imputations to his character.

But the venerable Carroll, who was at that time (1807) the only bishop in America, was too well acquainted with the solid virtue and sterling qualities of the prince-priest to be shaken in his esteem for Father Gallitzin by those infamous calumnies.

423. We take pleasure in making a few extracts, in this matter, from the excellent "Life of Gallitzin," by S. M. Brownson.

On May 11, 1807, Father Gallitzin wrote to Bishop Carroll:

"E. V. J. is returned from Baltimore, and already the news is in circulation that Mr. De Barth and Mr. Dubois are to be up immediately to judge me. I shall be very happy to see them or any other clergymen you would choose to send, although it would be a little hurtful to my feelings that they should come under that title. This is the only favor I shall beg of your lordship . . . that you will not allow every person to be a witness, but that you will lay down rules by

which the priests appointed may know who can be allowed to appear as a witness against a clergyman, and who not." (Life, p. 241.)

"At another time, when the last delegates or committee called upon Bishop Carroll to state their grievances, they found less courteous reception than was formerly accorded to the humblest backwoodsman who entered that dignified but fatherly presence: the bishop listened to their stories in unbroken silence, and when the full amount of their venom had been poured out, and they paused for an answer, he turned to them, it is said, with the calm inquiry, 'Is that all you have to say?' They admitted it was, and then quietly rising, he wished them good-day, and looked after them, as they awkwardly got out of the room, neither with anger nor contempt, but, if the truth must be told, with much the same absence of emotion with which one would look after some cowardly specimen of the canine species who had ventured on forbidden ground." (Life, p. 248.)

424. The defendant is the one against whom the charges are directed. When the affidavit has been made, and such proof exhibited as will justify the bishop to institute proceedings, the citation, or arrest as it is termed in civil jurisprudence, whether verbal or real, follows. This citation or summons is a warning to appear in court; or a written notification signed by the proper officer, to be served on a per-

son, warning him to appear in court at a day specified to answer the plaintiff.

It is twofold: verbal and real. The first consists in notifying the defendant, either by simple letter or by formal writ, to appear in court.

This instrument must have the name of the plaintiff, defendant, and judge; the cause of the summons; the place of appearance, and the time of trial.

If the accused refuses to appear without alleging sufficient reasons, the court will consider him contumacious, as showing contempt of its jurisdiction, and will therefore proceed with the trial without any further delay.

Real citation is the actual apprehension, arrest, or imprisonment of defendant, with the view to make him appear at court. This is resorted to when it is feared that he will otherwise escape.

425. These remarks apply with equal cogency to ecclesiastical judicature. As in civil, so in ecclesiastical judicatories, the bishop may compel plaintiff and defendant to take an oath not to allege anything which either of them knows to be false;

in other words, testimony may be admitted under oath only. (KENR. Mor. vol. ii. tract. xxii. cap. ii.)

In formal trials, the oath is generally administered to all witnesses; in informal causes, it may be dispensed with.

426. From what has been said, we infer the following:

1st. Judicial proceedings of ecclesiastical courts are similar to those of civil tribunals, though the latter borrowed from the former. A priest, therefore, who is accused of some crime, should be informed who his accusers are, and what the nature of the complaint may be. In this respect, as we have seen, Archbishop Spalding was a model of frankness to priests, worthy of imitation.

2d. The defendant should be afforded ample opportunities of repelling the charges made against him, not merely incidentally, but formally, and in open court. This should be done especially when priests are concerned.

3d. When pastors of souls and other clergymen are the defendants, it may not always be expedient to confront them with

their accusers when these are laymen; yet they should none the less be accurately informed of the allegations made against them, so as to be able to plead their own cause.

4th. This will be attained by carefully observing the decree of the Council of St. Louis, which prescribes that the bishop or vicar general should associate with himself two of the elder and experienced priests of the diocese in the hearing of the case. Priests who are accused should be allowed to bring their arguments of defence before this tribunal.

427. The office of ecclesiastical judge is twofold: ordinary and delegated. Ordinary judges are termed by canonists those who exercise jurisdiction, not by any special delegation or commission, but by virtue of their dignity or office. Such are bishops and inferior prelates of religious orders; also vicars general of bishops, either because of the jurisdiction they exercise, or as taking the place of the bishop. An ordinary judge can render decisions in his own name and authority, which he may also intrust to capable persons. All ordinary cases fall under his jurisdiction.

"In this country, however, a vicar general cannot preside at a trial except he be specially commissioned by the bishop." (KENR. Mor. vol. i. p. 345.)

428. The offences that may be committed by ecclesiastics are either criminal or civil. The former regard a breach of the law of God or the Church; the latter have reference to ecclesiastical property and endowments.

§ 89. CLERICS IMPLEADING ONE ANOTHER IN CIVIL COURTS.

429. We pass to another question: Can one ecclesiastic go to law against another ecclesiastic? Formerly, this was allowed in no case. At present, the rigor of this sanction is to some extent mitigated. Kenrick says:

"The authority of the Church has been greatly restricted in many, even Catholic countries; and ecclesiastics are now permitted to plead in various civil courts." (Mor. vol. ii. p. 347.)

430. Again, this author observes:

"The Sacred Congregation of Propaganda has modified the decree of the Provincial Council of Baltimore, with regard to the censures incurred by those

who carry before lay tribunals such causes as pertain to the ecclesiastical forum, and the same Congregation commanded that the decree should read thus:

"Whereas, grave scandals are given to the faithful, and serious injury inflicted on the clerical character, by bringing these causes before civil tribunals, we exhort all whom it may concern, amicably to arrange, or at least, to submit to the bishop, controversies arising among them, with regard to ecclesiastical matters or persons. But if any ecclesiastical person of either sex should rashly cause to be summoned before a lay tribunal, any other clerical or religious person of either sex, concerning matters strictly ecclesiastical, let him know, that he incurs the censures of the Church." (Apud KENR. l. c. p. 347.)

431. From this we infer:

1st. That laymen do not incur any censure by bringing matters, even of a strictly ecclesiastical nature, into lay courts. Yet they might commit sin, in thus causing grave scandal, and exposing the sanctity of religion to ridicule and contempt.

2d. That clerics may also have recourse to civil tribunals for serious reasons in regard to matters not exclusively ecclesiastical.

3d. That in causes not purely ecclesiastical, any cleric or religious of either sex may implead another religious or ecclesi-

astical person of either sex. Yet should this be done only when every other remedy has failed.

4th. That even in matters of a purely spiritual character, one cleric may sue another, if this is not done rashly, but for imperative reasons.

5th. When, however, ecclesiastics or religious of either sex implead each other rashly, that is, without having previously sought redress from the proper ecclesiastical tribunal, or without any very urgent cause, in matters solely and exclusively falling under the jurisdiction of the Church, they incur the censures.

432. We subjoin an instance to illustrate this doctrine. In Ireland, not long ago, a priest was suspended by Cardinal Cullen for the reason thus given in the cardinal's own words:

"The plaintiff (the priest in question) bound himself to obey the ordinances of the Church. One of these ordinances forbids one ecclesiastic to implead another ecclesiastic before a civil tribunal for slander spoken of the complaintant in his character of a priest. Rev. Mr. O'Keeffe violated that ordinance, and therefore I suspended him."

The latter must be well borne in mind,

as it was not simply for impleading an ecclesiastic on account of slander that Rev. Mr. O'Keeffe was suspended, but because the judicial action instituted by him in civil courts was for slander that had reference to his clerical reputation, and was therefore an offence cognizable in ecclesiastical courts only. Hence Judge Barry in his decision fully sustained the cardinal. After touching on the arguments of complainant, to wit, that the ordinance prohibiting one ecclesiastic from impleading another ecclesiastic before a civil tribunal was void and null, the learned judge said:

"If it were res integra, he would say that it was not contrary to public policy that there should be a rule prohibiting ministers of religion from bringing actions against each other for libel. He should rather say that the existence of such a rule would be beneficial in preventing scandals, and putting an end to proceedings injurious to religion and morals."

433. The slander in question was an accusation, made by the two curates of Rev. Mr. O'Keeffe, with regard to certain irregularities committed in the performance of his pastoral duties, such as not giving a proper account of moneys received, etc.

These allegations were brought before the bishop. As will be seen, they had reference to violations of the canons of the Church, and hence were of a strictly ecclesiastical nature. Therefore, in no sense could they be taken into a civil court.

Whether the above curates were either in justice or charity justifiable in advancing these charges, we shall not here discuss.

434. A similar case happened not long ago in this country. A priest was suspended by his bishop for not being able to give a proper account of church moneys, and for various other supposed delinquencies. He appealed to the civil courts for redress.

The bishop's position, however, we believe, was ultimately sustained by the Supreme Court of the State, which laid down, or rather confirmed and gave additional legal force to the principle that each religious denomination has full authority over its own members, and administers its affairs according to its own laws. In other words, all religious associations, like other bodies corporate, possess autonomy in their own

sphere. Common sense also teaches this, for while men are free, at least physically, to select any religion they please, yet once they have become members of any church, they must abide by its rules as long as they are members of it.

435. Prescinding from purely ecclesiastical matters, many cases occur when one ecclesiastic can implead another before a civil tribunal. An injury, for instance, in personal property, or an imputation of a crime, affecting not merely the clerical, but also the civil character of clergymen, would constitute a case in point. Still no one will deny, that as a general rule it is better not to have recourse to civil tribunals in these things.

These rules, however, do not apply to law-suits between ecclesiastics and laymen. Any clergyman may institute proceedings against a layman for injuries of any kind.

Moreover, the decree of the Sacred Congregation does not forbid ecclesiastics from impleading each other, even in ecclesiastical matters, except when this is done rashly, "temere."

§ 90. CENSURES: VARIOUS KINDS OF CENSURES.

436. We pass to the censures inflicted by the Church.

"A censure," says Kenrick, "is an ecclesiastical and medicinal punishment, depriving a baptized person, who is delinquent and contumacious, of certain spiritual benefits, committed to the dispensation of the Church, until remission of the guilt is obtained." (KENR. Mor. vol. ii. tract. xxii. De Cens. p. 353.)

Censures are divided into such as are "a jure" and "ab homine." The former are those which are imposed either by the general law of the Church, or by perpetual statute, whether it emanate from the Supreme Pontiff, or merely from a bishop.

437. Some canonists restrict censures "a jure" to such only as are inflicted by the universal or common law of the entire Church. We prefer to hold that, together with the above, all those which are laid down by any permanent episcopal statute are also censures "a jure."

This view is maintained by Kenrick:

"A censure," he tells us, "'a jure,' is that which is enacted by some general law or perpetual statute,

whether it be by the Sovereign Pontiff, or by a bishop." (Mor. vol. ii. p. 353.)

"Censure 'ab homine' is that which is made in the form of a precept, imposed on one or more individuals, or which has the form of a judicial sentence." (KENR. l. c.)

"Those censures which are contained in the canon law, or in the pontifical decrees, outside the body of canon law, or in diocesan statutes, are called 'a jure;' those which are imposed by the bishop on a guilty individual are termed 'ab homine.'" (Ib.)

Censures "a jure" do not cease to bind when the legislator dies: those "ab homine," however, are no longer of force at the death of the lawgiver from whom they emanated.

438. To incur a grave censure, these conditions are requisite:

1st. A mortal sin.

2d. An external action.

3d. That the action prohibited under censure, be full and complete in its kind.

4th. Contumacy.

Slight censures, such as withdrawing faculties, or suspension for a very brief space of time, may be imposed for sufficient reasons; nor is it necessary that all the above conditions should concur in them.

439. *Case.*—A Catholic woman has contracted marriage with a Protestant gentleman, before a sectarian preacher—"coram præcone protestantico"—in the Diocese of Newark, or in any other diocese where this offence entails excommunication ipso facto incurrenda, and reserved to the bishop.

Suppose this person, whom we shall call Constantia, while travelling over Europe, to meet a priest, and anxiously ask his advice how to obtain absolution. She tells him that she has not gone to confession for a number of years, owing to the fact, that soon after her marriage, she applied to several confessors, but that all of them said that she must go to the bishop, who alone could absolve her from the censure she had incurred. What advice should be given to Constantia? The reply is given in the following paragraph.

§ 91. RESERVATION OF CENSURES.

440. Before developing the solution of the above case, we premise:

1st. All censures contained in diocesan statutes are termed, as we have seen,

'a jure,' and can therefore be relaxed by any bishop or priest having jurisdiction." (KENR. Mor. vol. ii. p. 361.)

This view, we are aware, is disputed by some jurists, who contend that these censures are to be classed with those "ab homine," and which are therefore capable of being loosened only by the prelate that has inflicted them. Yet strong arguments, both intrinsic and extrinsic, stand in favor of our position. We take it, in consequence, to be a probable opinion.

2d. But in our case, the excommunication is reserved. Hence, like censures "ab homine," it cannot be remitted save by those from whom it emanated.

3d. The archbishop of the province has no power over the censure of suffragan bishops, save on legal interpellation, or in the visitation of a diocese undertaken by the authority of a provincial council. (KENR. Mor. vol. ii. p. 361.)

4th. It may be added that bishops can everywhere, even out of their dioceses, remove censures from subjects, both in and outside the confessional, provided it can

be done without any external judicial proceedings. (KENR. l. c.)

5th. Absolution from censures may be imparted to one who is absent, or at a distance; hence it may be obtained through letters. This can be done, however, for grave reasons only; and a procurator or proctor is generally appointed to confer the absolution. (KENR. l. c.)

Some have asked whether the absolution could not be given by telegraph. Yet this would not appear to be admissible, especially as telegrams are easily misconstrued and changed.

6th. Ignorance of the existence of the law itself, or of its penal character, exempts delinquents from censures, papal as well as episcopal. Hence, whoever is unaware or in doubt, either that he committed the act, or that it was prohibited under censure, does not incur the penalty.

441. But to this it may be objected that episcopal censures, when reserved, involve reservation of sin also; that, in fact, the reservation is the essential element, whilst the censure is but accidental; that, therefore, the reservation, which is but a

limitation of jurisdiction of the confessor, deprives him of the faculty of absolving, no matter whether the delinquent be informed of the censure or not, whether he be conscious of the fact and law, or whether he be entirely and innocently ignorant of the existence of either. This process of reasoning is, however, by no means so certain as would appear at first sight. In fact, there are two opinions: one maintains, with St. Liguori, that reservation, is a restriction of jurisdiction on the part of the confessor, directly affecting the priest, and but indirectly the penitent. Hence it is inferred that reservation obtains even when the penitent is ignorant of it.

The second opinion holds, on the contrary, that the reservation is always penal, and that in consequence it is not incurred by delinquents who are uninformed of it. (See LUGO, De Pœnit.; SANCHEZ, De Matr.; SPORER, apud Bellarmin; Notes on GURY, vol. ii. p. 369. edit. Ball. Romæ, 1869.)

442. To this opinion we adhere. Nor do we think it sufficiently refuted in the Vindiciæ Alphonsianæ, p. 520, pars v. quæst. 12. art. 3.)

For even were we to admit, with St. Alphonsus, that reservation is a restriction of jurisdiction, and that it therefore directly affects the confessor and but indirectly the penitent, this would not decide the question whether this restriction of jurisdiction is of force also when ignorance of the penal law intervenes. It would seem utterly useless to apply to individuals a law whose existence is entirely unknown to them.

This is the argument advanced by Father Ballerini, and we think it remains untouched by the reasoning of the authors of the Vindiciæ.

443. Constantia, therefore, to return to our case, if ignorant of the episcopal censure and reservation at the time of her marriage, incurred neither. If, however, she was aware of the law, and its penal character, she is bound by the censure, and can be absolved only by her ordinary or the Pope; appearing either personally before them, or at least by letter or proxy.

Should both these conditions be impracticable, or involve tedious delay, Constantia could go to confession to any priest having jurisdiction, in order to comply with

the paschal precept, or extricate herself from the state of mortal sin.

The Church suspends her laws for such reasons, as she has received her power from Christ, not unto destruction, but unto the edification of the members of Christ's mystical body.

444. Any confessor, therefore, can absolve her "pro hac vice." Nor, is she even bound to confess that sin which is reserved, in this confession, as the priest has no power over it, and absolves her but indirectly from it, and as she is obliged to declare the sin in question to the superior who can remove the censure.

Better, no doubt, it will be to confess the reserved sin, even to the confessor who has no jurisdiction over it. But necessary to the validity of the sacrament it is not.

§ 92. SUSPENSIONS IN GENERAL: SUSPENSION EX INFORMATA CONSCIENTIA.

445. We pass to the other censures of the Church.

A suspension is an ecclesiastical censure, by which a cleric is prohibited the exercise

of an ecclesiastical office or benefice, or both. Suspension from office (ab officio) deprives an ecclesiastic of the exercise of the authority inherent in his office or charge. Again, clerics may be suspended from the exercise of functions of order; as, for instance, saying mass. And yet, they may not be forbidden to hear confessions.

And again, the contrary may take place. One may be allowed to say mass, and yet be inhibited from hearing confessions. Suspension generally includes both, unless otherwise stated. A violation of the suspension entails irregularity.

446. Suspension should be imposed, like every other censure, only after a mature investigation of the cause set forth in writing, and after the defendant or accused party has been heard." (BENED. XIV. ut infra.)

"Yet, at times," continues this great pontiff, "it is inflicted without the observance of legal forms of procedure, or ex informata conscientia." (De Synod. Dioc. l. xii. cap. viii. n. 3–5.)

447. Our American theologian says:

"Nor is the bishop bound in such a case to render

an account of his action, except to the Supreme Pontiff. An appeal to the metropolitan would be null and void. This manner of suspending should be but rarely made use of, and for occult crimes only, and not otherwise, as it is outside the ordinary course of justice: it is advisable, therefore, not to parade such powers in a synod." (KENR. Mor. vol. ii. p. 374.)

This author adds:

"In this country, bishops are accustomed to 'revoke faculties' granted to missionaries whenever they judge priests to be unworthy of their office; because, as a general rule, they observe no form of ordinary judicature, which, however, should be done hereafter, as the Sacred Congregation de Propaganda Fide points out, by approving the decree of the Council of St. Louis, on criminal causes of ecclesiastics. This revocation of faculties many distinguish from suspension." (KENR. l. c.)

448. We append the following from the same illustrious writer:

"Many grave reasons exist why bishops should revoke faculties without assigning any reason, or without due process of law, that is, ex informata conscientia; for witnesses are frequently unwilling to testify in public, lest they should imperil their good name or incur odium; and again, the crimes of ecclesiastics easily become divulged upon an investigation made in a formal trial, and in the presence of several witnesses, and thus scandal is given to the faithful, and matter of triumph afforded to heretics: occasions of

appealing to the metropolitan would thus be frequently furnished priests, who would be continually recurring to him with the evidences of their innocence: ecclesiastical misdemeanors would thus become more extensively noised abroad, the authority of bishops would be slighted and set at naught, and opportunity given of bringing such matters before the civil magistrate." (KENR. Mor. vol. ii. p. 375.)

449. This, it would seem to us, with all deference to the great American prelate, is exaggerating the reasons for this abnormal and extraordinary manner of proceedings, which nevertheless is so universally adopted by the American episcopate. It seems no longer to be the exception, as canon law would have it: it has become emphatically the rule followed by the bishops of this country.

Kenrick mildly censures this custom in the following terms:

"But, speaking frankly, when no form of judicature is adhered to, opportunities are furnished of decrying bishops as doing everything in an arbitrary manner; and by practically cutting off the right of appeal to the metropolitan, no other chance of redress is left the accused, save that of going to Rome.

"Hence, I think suspension should not be imposed on any ecclesiastic except by due form of canonical procedure, at least as far as circumstances will allow;

so that the defendant may appeal to the metropolitan if he so chooses; by his judgment any injury that may have been done the defendant can easily be remedied, should his bishop have been mistaken in the case; or also it will render still more apparent the crime of the accused, and at the same time show all that a second opportunity of self-defence has been given." (KENR. Mor. vol. ii. p. 375.)

450. To make still more impressive what our American theologian says, and to point out how careful bishops should be in proceeding with criminal causes of ecclesiastics without following the usual form of law, or, in other words, acting ex informata conscientia, we shall quote from Benedict XIV., as follows:

"At times, circumstances will occur of such a nature, as have not been foreseen or contemplated by the common law, which, therefore, by a certain epikeia, would seem, by tacit permission of the law itself, to allow the bishop to relax the common law, or overlook to a certain extent its severity, especially when the thing does not admit of delay, and the Sovereign Pontiff cannot be consulted, nor his supreme authority invoked." (See BENED. XIV. De Synod. Dioc. lib. xii. cap. viii. n. 1–3.)

Again, this illustrious writer says:

"Yet it is not on that account lawful for a bishop to put forth this power, which attaches to him merely

by virtue of the benignity and indulgence of the common law, in his synod, or in any way parade it, laying down, namely, as a general statute, what is allowable in a very special case only: that would indeed savor strongly of ambition and rashness." (BENED. xiv. l. c.)

451. Now what means the phrase ex informata conscientia? Benedict XIV., casually explaining this point, says:

"That when the bishop knows an occult crime, whether altogether outside the ordinary forms of judicature—extrajudicialiter—or in any other way whatever—quomodolibet—he may either refuse giving holy orders, or suspend the delinquent from the exercise of an order already received." (Ib.)

452. From this we draw the following conclusions:

1st. The phrase "ex informata conscientia" means simply an information gained privately, in any manner whatever, outside the ordinary course of a trial or judicial proceedings.

Suspension, therefore, ex informata conscientia, signifies the censure inflicted by the bishop, not upon the verdict or decision arrived at by a public trial, but upon an incontrovertible private information.

2d. Suspension ex informata conscien-

tia, that is, inflicting the censure without observing any form of legal proceedings in the investigation of a cause, and its decision, but acting from a private knowledge of the crime, is not contemplated in, or even explicitly sanctioned by the common law; it is, therefore, an exception to the ordinary rule.

3d. It applies merely to occult crimes.

4th. The private knowledge or information of the bishop must not be founded upon mere conjecture, but upon moral certainty. Nor is it sufficient that an accusation should be brought before the bishop by a few hot-headed and factious parishioners, who are but too frequently disposed to grumble at everything done by the parish priest. An indubitable and certain information is essential.

5th. Even in regard to occult crimes, this mode of procedure should be adopted only when scandal to the faithful or matter of triumph to heretics, and serious injury to the Church, would be the result of an ordinary trial.

6th. This judicatory, therefore, of private information does not apply to all cases.

Bishops who extend it to all crimes, making it their ordinary rule of action instead of the exception, grievously offend against the common law of the Church, as was decided by Benedict XIV.

7th. The bishops of America, consequently, are bound to observe the decree of the Council of St. Louis, which is sanctioned by the Holy See, and which provides for a fair trial, to be conducted by the bishop or vicar general and two priests selected by them, so that the defendant or accused ecclesiastic may have a chance of defending himself, and, if need be, of appealing to the metropolitan.

8th. As long as the above decree is not enforced and complied with by the prelates of this country, every priest must be simply at the mercy or caprice of his bishop, and, practically speaking, little if any protection against slander and injustice is left him.

Is it marvellous that, under such circumstances, redress should at times have been sought in lay tribunals? Would not the most effective means of preventing ecclesiastical matters from being carried into lay

courts, consist in conforming to the wise provisions of ecclesiastical law?

Would not in this manner a considerable number of unjust sentences upon innocent priests be avoided?

453. All objections to the contrary, we think, can only be of little weight when compared with the pernicious effects of judicatories ex informata conscientia.

To facilitate normal canonical proceedings, the following may not come amiss.

Formerly, when accusers were wanting or unwilling to appear in public, the bishop would appoint certain priests to act as plaintiffs, so as to enable the parties to go on with the trial. (WALT. Jus Can. p. 372.) This is somewhat similar to the office of State or district attorney of civil courts. And it is but another proof of the anxiety of the Church to procure a fair and impartial trial for defendants.

We now draw to the close of our labor. We humbly trust that the Father of mercies and the God of all consolation, who comforteth us in all our tribulations, will one day, at the end of our mortal pilgrimage, and when the time of our dissolution

is at hand, give us, in His infinite goodness, a place among the blessed in heaven.

If, in these pages, we have uttered anything, even in the slightest degree at variance with the teachings of Holy Church, we hereby unreservedly retract it, and submit ourselves to the infallible judgment of the Roman Pontiff, the Successor of St. Peter.

APPENDIX.

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APPENDIX.

SYLLABUS, *issued in* 1864, *embracing the principal Errors of our time, which are censured in Consistorial Allocutions, Encyclicals, and other Apostolic Letters of our Most Holy Father Pope Pius IX.*

§ 1.

PANTHEISM, NATURALISM, AND ABSOLUTE RATIONALISM.

I. THERE exists no supreme, all-wise, and most provident divine Being distinct from this universe, and God is the same as the nature of things, and therefore liable to change; and God is really made both in man and in the world, and all things are God and have the self-same substance of God; and God is one and the same thing with the world, and therefore spirit is the same thing with matter, necessity with liberty, truth with falsehood, good with evil, and just with unjust.

II. All action of God on mankind and on the world is to be denied.

III. Human reason, without any regard whatever being had to God, is the one judge of truth and falsehood, of good and evil; it is a law to itself, and

suffices by its natural strength for providing the good of men and peoples.

IV. All the truths of religion flow from the natural force of human reason; hence, reason is the chief rule whereby man can and should obtain the knowledge of all truths of every kind.

V. Divine revelation is imperfect, and therefore subject to a continuous and indefinite progress corresponding to the advance of human reason.

VI. The faith of Christ is opposed to human reason; and divine revelation not only nothing profits, but is even injurious to man's perfection.

VII. The prophecies and miracles recorded and narrated in Scripture are poetical fictions, and the mysteries of Christian faith a result of philosophical investigations; and in the books of both Testaments are contained mythical inventions; and Jesus Christ himself is a mythical fiction.

§ 2.

MODERATE RATIONALISM.

VIII. Since human reason is on a level with religion itself, therefore theological studies are to be handled in the same manner as philosophical.

IX. All the dogmas of the Christian religion are without distinction the object of natural science or philosophy; and human reason, with no other than an historical cultivation, is able from its own natural strength and principles to arrive at true knowledge of even the more abstruse dogmas, so only these dogmas have been proposed to the reason itself as its object.

X. Since the philosopher is one thing, and philosophy another, the former has the right and duty of submitting himself to that authority which he may have approved as true; but philosophy neither can nor should submit itself to any authority.

XI. The Church not only ought never to animadvert on philosophy, but ought to tolerate the errors of philosophy, and leave it in her hands to correct herself.

XII. The decrees of the Apostolic See and of Roman Congregations interfere with the free progress of science.

XIII. The method and principles whereby the ancient scholastic doctors cultivated theology are not suited to the necessities of our time and to the progress of the sciences.

XIV. Philosophy should be treated without regard had to supernatural revelation.

N.B. To the system of Rationalism belong mostly the errors of Anthony Günther, which are condemned in the Epistle to the Cardinal Archbishop of Cologne, "Eximiam tuam," June 15, 1857, and in that to the Bishop of Breslau, "Dolore haud mediocri," April 30, 1860.

§ 3.

INDIFFERENTISM, LATITUDINARIANISM.

XV. Every man is free to embrace and profess that religion which, led by the light of reason, he may have thought true.

XVI. Men may in the practice of any religion whatever find the path of eternal salvation, and attain eternal salvation.

LVII. At least good hopes should be entertained concerning the salvation of all those who in no respect live in the true Church of Christ.

LVIII. Protestantism is nothing else than a different form of the same Christian religion, in which it is permitted to please God equally as in the true Catholic Church.

§ 4.

Socialism, Communism, Secret Societies, Bible Societies, Clerical-Liberal Societies.

Some of this kind are often reproved, and in the most severe terms, in the Encyclical "Qui pluribus" November 9, 1846; the Allocution "Quibus quantisque," April 20, 1849; the Encyclical "Nemo vestrum" December 8, 1849; the Allocution "Singulari quadam," December 9, 1854; the Encyclical "Quanto conficiamur," August 10, 1863.

§ 5.

False principles concerning the Church and her Rights.

LIX. The Church is not a true and perfect society, fully free, nor does she enjoy her own proper and permanent rights, given to her by her divine Founder, but it is the civil power's business to define what are the Church's rights, and the limits within which she may be enabled to exercise them.

LX. The ecclesiastical power should not exercise its authority without permission and assent of the civil government.

LXI. The Church has not the power of dogmat-

[illegible] [illegible] [illegible] [

XXXI. The ecclesiastical forum for the temporal causes of clerics, whether civil causes or criminal, should be altogether abolished, even without consulting, and against the protest of the Apostolic See.

XXXII. Without any violation of natural right and equity, that personal immunity may be abrogated, whereby clerics are exempted from the burden of undertaking and performing military services; and such abrogation is required by civil progress, especially in a society constituted on the model of a free rule.

XXXIII. It does not appertain exclusively to ecclesiastical jurisdiction by its own proper and native right to direct the teaching of theology.

XXXIV. The doctrine of those who compare the Roman Pontiff to a prince, free and acting in the Universal Church, is the doctrine which prevailed in the middle age.

XXXV. Nothing forbids that by the judgment of some general council, or by the act of all peoples, the supreme Pontificate should be transferred from the Roman Bishop and city to another Bishop and another State.

XXXVI. The definition of a national council admits no further dispute, and the civil administration may fix the matter on this footing.

XXXVII. National Churches separated and totally disjoined from the Roman Pontiff's authority may be instituted.

XXXVIII. The too arbitrary conduct of Roman Pontiffs contributed to the Church's division into East and West.

§ 6.

ERRORS CONCERNING CIVIL SOCIETY, CONSIDERED BOTH IN ITSELF, AND IN ITS RELATIONS TO THE CHURCH.

XXXIX. The State, as being the origin and fountain of all rights, possesses a certain right of its own, circumscribed by no limits.

XL. The doctrine of the Catholic Church is opposed to the good and benefit of human society.

XLI. The civil power, even when exercised by a non-Catholic ruler, has an indirect negative power over things sacred ; it has consequently not only the right which they call exequatur, but that right also which they call *appel comme d'abus*.

XLII. In the case of a conflict between laws of the two powers, civil law prevails.

XLIII. The lay power has the authority of rescinding, of declaring null, and of voiding solemn conventions (commonly called Concordats) concerning the exercise of rights appertaining to ecclesiastical immunity, which have been entered into with the Apostolic See, without this See's consent, and even against its protest.

XLIV. The civil authority may mix itself up in matters which appertain to religion, morals, and spiritual rule. Hence, it can exercise judgment concerning those instructions which the Church's pastors issue according to their office for the guidance of conscience : nay, it may even decree concerning the administration of the holy sacraments, and concerning the dispositions necessary for their reception.

XLV. The whole governance of public schools, wherein the youth of any Christian State is educated, episcopal seminaries only being in some degree excepted, may and should be given to the civil power; and in such sense be given, that no right be recognized in any other authority of mixing itself up in the management of the schools, the direction of studies, the conferring of degrees, the choice or approbation of teachers.

XLVI. Nay, in the very ecclesiastical seminaries, the method of study to be adopted is subject to the civil authority.

XLVII. The best constitution of civil society requires that popular schools which are open to children of every class, and that public institutions generally which are devoted to teaching literature and science and providing for the education of youth, be exempted from all authority of the Church, from all her moderating influence and interference, and subjected to the absolute will of the civil and political authority (so as to be conducted) in accordance with the tenets of civil rulers, and the standard of the common opinions of the age.

XLVIII. That method of instructing youth can be approved by Catholic men, which is disjoined from the Catholic faith and the Church's power, and which regards exclusively, or at least principally, knowledge of the natural order alone, and the ends of social life on earth.

XLIX. The civil authority may prevent the bishops and faithful from free and mutual communication with the Roman Pontiff.

L. The lay authority has of itself the right of presenting bishops, and may require of them that they enter on the management of their dioceses before they receive from the Holy See canonical institution and apostolic letters.

LI. Nay, the lay government has the right of deposing bishops from exercise of their pastoral ministry; nor is it bound to obey the Roman Pontiff in those things which regard the establishment of bishoprics and the appointment of bishops.

LII. The Government may, in its own right, change the age prescribed by the Church for the religious professions of men and women, and may require religious orders to admit no one to solemn vows without its permission.

LIII. Those laws should be abrogated which relate to protecting the condition of religious orders and their rights and duties; nay, the civil government may give assistance to all those who may wish to quit the religious life which they have undertaken, and to break their solemn vows; and in like manner it may altogether abolish the said religious orders, and also collegiate churches and simple benefices, even those under the right of a patron, and subject and assign their goods and revenues to the administration and free disposal of the civil power.

LIV. Kings and princes are not only exempted from the Church's jurisdiction, but also are superior to the Church in deciding questions of jurisdiction.

LV. The Church should be separated from the State, and the State from the Church.

§ 7.

Errors concerning Natural and Christian Ethics.

LVI. The laws of morality need no divine sanction, and there is no necessity that human laws be conformed to the law of nature, or receive from God their obligatory force.

LVII. The science of philosophy and morals, and also the laws of a State, may and should withdraw themselves from the jurisdiction of Divine and ecclesiastical authority.

LVIII. No other strength is to be recognized, except material force; and all moral discipline and virtue should be accounted to consist in accumulating and increasing wealth by every method, and in satiating the desire of pleasure.

LIX. Right consists in the mere material fact; and all the duties of man are an empty name, and all human facts have the force of right.

LX. Authority is nothing else but numerical power and material force.

LXI. The successful injustice of a fact brings with it no detriment to the sanctity of right.

LXII. The principle of non-intervention (as it is called) should be proclaimed and observed.

LXIII. It is lawful to refuse obedience to legitimate princes, and even rebel against them.

LXIV. A violation of any most sacred oath, or any wicked and flagitious action whatever, repugnant

to the eternal law, is not only not to be reprobated, but is even altogether lawful, and to be extolled with the highest praise when it is done for love of country.

§ 8.

ERRORS CONCERNING CHRISTIAN MATRIMONY.

LXV. It can in no way be tolerated that Christ raised matrimony to the dignity of a sacrament.

LXVI. The sacrament of marriage is only an accessory to the contract, and separable from it; and the sacrament itself consists in the nuptial benediction alone.

LXVII. The bond of matrimony is not indissoluble by the law of nature; and in various cases divorce, properly so called, may be sanctioned by the civil authority.

LXVIII. The Church has no power of enacting diriment impediments to marriage; but that power is vested in the civil authority, by which the existing impediments may be removed.

LXIX. In later ages the Church began to enact diriment impediments, not in her own right, but through that right which she had borrowed from the civil power.

LXX. The Canons of Trent, which inflict the censure of anathema on those who dare to deny the Church's power of enacting diriment impediments, are either not dogmatical, or are to be understood of this borrowed power.

LXXI. The form ordained by the Council of

Trent does not bind on pain of nullity, wherever the civil law may prescribe another form, and may will that, by this new form, matrimony shall be made valid.

LXXII. Boniface VIII. was the first who asserted that the vow of chastity made at ordination annuls marriage.

LXXIII. By virtue of a purely civil contract there may exist among Christians marriage, truly so called; and it is false that either the contract of marriage among Christians is always a sacrament, or that there is no contract if the sacrament be excluded.

LXXIV. Matrimonial causes and espousals belong by their own nature to the civil forum.

N.B. To this head may be referred two other errors: on abolishing clerical celibacy, and on preferring the state of marriage to that of virginity. They are condemned, the former in the Encyclical "Qui pluribus," November 9, 1846; the latter in the Apostolic Letters "Multiplices inter," June 10, 1851.

§ 9.

Errors concerning the Roman Pontiff's Civil Princedom.

LXXV. Children of the Christian and Catholic Church dispute with each other on the compatibility of the temporal rule with the spiritual.

LXXVI. The abrogation of that civil power, which the Apostolic See possesses, would conduce

in the highest degree to the Church's liberty and felicity.

N.B. Besides these errors explictly branded, many others are implicitly reprobated in the exposition and assertion of that doctrine which all Catholics ought most firmly to hold concerning the Roman Pontiff's civil princedom. This doctrine is clearly delivered in the Allocution "Quibus quantisque," April 20, 1849; in the Allocution "Si semper antea," May 20, 1850; in the Apostolic Letters "Cum Catholica Ecclesia," March 26, 1860; in the Allocution "Novos," September 28, 1861; in the Allocution "Jamdudum," March 18, 1861; in the Allocution "Maxima quidem," June 9, 1862.

§ 10.

Errors which have reference to the Liberalism of the day.

LXXVII. In this our age, it is no longer expedient that the Catholic religion should be treated as the only religion of the State, all other worships whatsoever being excluded.

LXXVIII. Hence it has been laudably provided by law in some Catholic countries, that men thither immigrating should be permitted the public exercise of their own several worships.

LXXIX. For truly it is false that the civil liberty of all worships, and the full power granted to all of openly and publicly declaring any opinions or thoughts whatever, conduces to more easily corrupting the

morals and minds of peoples, and propagating the plague of indifferentism.

LXXX. The Roman Pontiff can and ought to reconcile and harmonize himself with progress, with liberalism, and with modern civilization.*

* Translation of "The Year of Preparation for the Vatican Council." London: Burns, Oates & Co. 1869.

II.

Primacy of the Roman Pontiff.

(Note to Chapter III. § 9.)

1. Of the Collation of the Primacy, Archbishop Manning says:

"The first chapter (of the First Dogmatic Constitution of the Vatican Council on the Church of Christ) declares the Primacy of Peter over the Apostles; and that his primacy was conferred on him immediately and directly by our Lord, and consists not only in honor, but also in jurisdiction." (The Vatic. Council, 1871, p. 61.)

2. On the Nature and Comprehension of the Primacy, the same author thus speaks:

"The third chapter (l. c.) defines the nature of his jurisdiction, namely . . . the plenitude of power. . . . It is, therefore, jurisdiction episcopal, ordinary and immediate, over the whole Church; over both pastor and people, that is, over the whole Episcopate, collectively and singly, and over every particular church and diocese." (L. c. p. 61.)

3. Distinguishing between the private and official capacity of the Pope, Manning says:

"The Pontiff speaks 'ex cathedra' when, and only when, he speaks as the Pastor and Doctor of all Christians. By this, all acts of the Pontiff as a private person, or a private doctor, or as a local bishop, or as a sovereign of a State, are excluded. In all these acts, the Pontiff may be subject to error.

In one, and one only, capacity, he is exempt from error; that is, when as teacher of the whole Church in things of faith and morals." (L. c. p. 64.)

4. The seat or organ of Infallibility is thus alluded to:

"It is to be carefully noted that this definition (of Infallibility) declares that the Roman Pontiff possesses by himself the infallibility, with which the Church, in unison with him, is endowed." (MANNING, Vat. C. p. 96.)

5. In regard to the meaning of the terms "personal," "independent," "absolute," and "separate," as applied to papal infallibility, Archbishop Manning very well distinguishes thus:

"From what has been said, the precise meaning of the terms before us may be easily fixed.

"1. The privilege of infallibility is personal, inasmuch as it attaches to the Roman Pontiff, the successor of Peter, as a 'public person,' distinct from, but inseparably united to the Church; but it is not personal, in that it is attached, not to the private person, but to the primacy, which he alone possesses.

"2. It is also 'independent,' inasmuch as it does not depend upon either the Ecclesia docens, or the Ecclesia discens; but it is not independent, in that it depends in all things upon the Divine Head of the Church, upon the institution of the primacy by Him, and upon the assistance of the Holy Ghost.

"3. It is 'absolute,' inasmuch as it can be circumscribed by no human or ecclesiastical law; it is not absolute, in that it is circumscribed by the office

of guarding, expounding, and defending the deposit of revelation.

"4. It is 'separate' in no sense, nor can be, nor can so be called, without manifold heresy, unless the word be taken to mean 'distinct.'

"In this sense, the Roman Pontiff is distinct from the Episcopate, and is a distinct subject of infallibility; and in the exercise of his supreme doctrinal authority, or magisterium, he does not depend for the infallibility of his definitions upon the consent or consultation of the Episcopate, but only on the Divine assistance of the Holy Ghost." (The Vatican Council, by MANNING, p. 119.)

III.

Of Secular Priests entering Religious Communities: Is the Permission of their Ordinary requisite?

(Note to Chapter VI. § 20.)

This question is fully developed by Pope Benedict XIV., Bullar. tom. 2, p. 156, edit. Prati, 1846. The following is a summary of the points contained in the Rescript of Pope Benedict XIV., having reference to the question in hand.

1. Leander Chizzola, archdeacon of the cathedral at Brescia, on a sudden left the diocese, and without even informing his bishop of the step, became a Jesuit in the city of Bologne.

His ordinary complained of this conduct to Benedict XIV., and argued against it, on the plea that he had not been consulted about the matter, that the Church would greatly suffer by it, etc., etc. He demanded, therefore, that Leander be compelled to return to his benefice, and that a general law be enacted, applicable to all cases of a similar kind.

2. Two questions, says Benedict XIV., are here involved: the particular case of Leander; the general law to be made for the entire Church to regulate all such cases.

3. As regards the first, Benedict XIV. points to the case of Pancratius, deacon of the church at Vienna, who embraced the monastic state, contrary to the wish of Desiderius, who was then Bishop of Vienna.

Pope St. Gregory, the Great, being appealed to by Pancratius, decided that he could remain in the monastery; that his bishop, in fact, ought to encourage him to persevere in this noble resolve, although he had left without even informing his bishop about it.

4. With reference to the second question, that a general law ought to be issued, this would not appear to be necessary, the canons containing ample provisions on this head.

In fact, we read in canon 50 of the Fourth Council of Toledo, held in 633 by St. Isidor:

"Clerics who desire to become monks should, by reason of the more perfect life they wish to embrace, be allowed by bishops freely to enter monasteries.

"Nor should they who are anxious to lead a life of contemplation be hindered from so doing."

Another canon reads thus:

"A cleric cannot leave his church without the consent of the bishop: this holds good, unless he wishes to embrace a more perfect state of life: in that case he is free to go into a monastery, even against the will of the bishop. Tunc enim liberum est illi, etiam episcopo contradicente, monasterium ingredi." (Decr. Gratiani, Can. Cleric. 19. quæst. 1.)

5. St. Thomas, 2. 2. quæst. 189, art. 7, holds the same views. He alleges as one of his reasons, that priests oblige themselves only so long to have charge of souls as they retain their parish or benefice; but they by no means bind themselves always to keep possession of the parish or benefice.

St. Antoninus and other eminent theologians also maintain this opinion.

6. But the objection might be made that the canons which allow secular priests to enter into religious communities even against the will of the bishop, refer to strictly monastic institutions only. This difficulty cannot hold. For, as Benedict XIV. says, the liberty of entering into monasteries ought equally to apply to religious institutes of every kind.

7. Sometimes, however, it may not be a little damaging to the interests of a diocese that secular priests should become religious. In this case, the bishop and the superior can consult with each other, or also the Holy See may settle the matter.

8. Before embracing the religious state, a priest, as a general rule, should ask permission of his bishop; if the latter refuses his consent, he may, nevertheless, reduce his resolve to practice.

The above outline of the Rescript of Benedict XIV., Bullar. xxv. Jan. 14, 1747, shows the admirable clearness of judgment of the great Pope. It is needless to say, that the rescript covers the entire ground of controversy, and places the question in a clear light. No words of our own could add any force to the luminous arguments given above.

IV.

Promulgation of the Tridentine Decree on Clandestine Marriages, in Ireland.

(Note to Chapter XXI. § 67.)

1. Of the publication of the Decree of the Council of Trent on Clandestine Marriages, in Ireland, Perrone says:

"The Decree of Trent on Clandestine Marriages is promulgated in most of the dioceses of Ireland: in some places, however, especially the northern districts, which were already occupied by heretics, it could not be published." (Perrone, De Matr. Christ. vol. ii. p. 248. edit. Leodii, 1861.)

2. In note 98 to page 244, vol. ii., Perrone says:

"For, in 1784, as we shall see, the Benedictine Declaration was extended to it (Ireland): hence the Decree of Trent had, of necessity, been published long before that time.

"Hence, on the 7th of March, 1785, this rescript was sent to the archbishops of Ireland:

"'It is known to your lordships that several bishops of Ireland have repeatedly asked this Sacred Congregation de Prop. Fide, that the judgment of the Holy See might be announced to them, in regard to the validity of marriages that are contracted between parties of whom the one is Catholic, the other Protestant, and which are celebrated without the observance of the form prescribed by the Council of Trent; whether or not such alliances are valid in Ireland.'

"In order to solve this question, the necessary information was obtained, and finally the matter was fully examined by the Sacred Cong. of the Holy Office, March 3d of the current year (1785), in the presence of the Sovereign Pontiff, Pius VI. Whereupon his Holiness, having heard the opinions of the cardinals and general inquisitors, decreed that in Ireland, mixed marriages which had already been contracted, or would in future be contracted, even without adhering to the form of the Council of Trent, in places where this Council or its Decree of Sess. 24, c. i. De Ref., was 'perhaps' promulgated, should be considered valid though illicit, in case no other canonical impediment stood in the way." (PERRONE, l. c.)

3. "Yet," continues Perrone, "in the ordo divini officii issued in 1857 for the use of the venerable Irish clergy, by order of the Most Rev. Cullen, Archbishop of Dublin, for the year 1857, we read on page v. the following:

"'This Decree (Trid. Decr. on Clandest. Marr.) has been in force in all the dioceses of Ireland, save the Archdiocese of Dublin, and the dioceses of Kildare, Ferns, Ossory, Meath, and Galway; but in these dioceses it was also published on the 2d of Dec., 1827, and therefore obtained the force of law thirty days afterward, namely, on Jan. 1st of the following year, 1828, and, consequently, is now obligatory all over Ireland.'" (Note 98 to p. 244, PERRONE, De Matr. Christ. vol. ii.)

4. Perrone, however, does not think that the Tridentine Decree is published in all the dioceses of Ireland. For he says:

"But the Tridentine Decree was not promulgated in England, Scotland, and 'some provinces of Ireland.'" (PERRONE, l. c. p. 245.)

This he confirms in a foot-note to p. 245, l. c., by a decree of the Propaganda of July 18, 1787, which decides that the publication of the decree cannot be assumed in Ireland, and that, therefore, marriages contracted before Protestant ministers are valid.

From all this, we infer as follows:

1. Perrone, in the edition of his celebrated work, De Matrimonio Christiano, dated 1861, holds that in some parts of Ireland the Tridentine Decree on Clandestine Marriages is not yet promulgated.

2. Kenrick, on the contrary, Theol. Mor. vol. ii. p. 328, maintains that the Trid. Decree was published, not only in some dioceses, but throughout all Ireland, as early as Dec. 2, 1827.

3. This view of Kenrick is put forth, also, by Cardinal Cullen, in the ordo divini officii for the year 1857.

4. In view, therefore, of this disagreement of these excellent authorities, it would appear that with regard to the dioceses of Kildare, Ferns, Ossory, Meath, and Galway, as also the Archdiocese of Dublin, the question still remains doubtful; and therefore, in these places, mixed marriages, as well as purely Catholic ones, celebrated in the presence of Protestant ministers or secular magistrates, are valid, though illicit and sinful.

V.

CAN INDIVIDUAL THEOLOGIANS AND CANONISTS COMMENT ON THE ACTS AND DECREES OF COUNCILS, WHETHER ECUMENICAL, NATIONAL, OR PROVINCIAL?

1. IN reply to this question, we say, there are three kinds of comments or interpretations:

(*a*) "Interpretatio authentica," that is, an explanation of ecclesiastical laws, enacted by Ecumenical, National, and Provincial Councils, which is made by the lawgiver himself, or by one authorized by him. This interpretation emanates from the Pope, the Sacred Congregations, and from the bishops of the Church.

(*b*) "Interpretatio usualis," namely, that which is established by long usage or custom.

(*c*) Finally, "interpretatio doctrinalis," that which is given by learned men.

2. The "interpretatio authentica" is authoritative, and carries with it the force of law itself. The "interpretatio usualis" possesses the same authority.

The "interpretatio doctrinalis," that which is given by canonists and theologians, has no other weight or influence than that which it derives from the greater or lesser solidity of the reasons alleged by its several authors.

3. These points are admitted by all jurists and theologians, and apply to civil no less than to ecclesiastical legislation. (See KENRICK, Theol. Mor. vol. i. tract. iv. De Leg. Eccl. cap. iii. p. 112. De In-

terpr. Leg. ; KONING's Moral Theol. vol. i. p. 58, tract. De Leg. cap. iv. De Interpr. Leg.)

4. The interpretation of private jurists and theologians, and their comments on the laws of the Church, though not possessed of the authority of law, has, nevertheless, been always deservedly held in high esteem. (KENRICK, l. c.)

This sort of interpretation, therefore, far from being prohibited, has constantly and uniformly been encouraged by the Church.

5. Hence, it is lawful for any theologian or jurist to explain and comment on the Acts and Decrees of the Second Plenary Council of Baltimore, approved as they are by the Holy See. In fact, it is not only lawful, but very laudable to elucidate the decrees of the Second Plenary Council of Baltimore, or of any other council, whether ecumenical or merely national.

6. This sort of interpretation, however, is not binding on the faithful, and does not acquire the force of law.

7. It is forbidden that any private theologian or canonist should "impugn" the authority of the decrees of a National Council when approved of by the Holy See.

8. A National or Provincial Council may be ratified by the Holy See in two ways :

(*a*) In forma communi, when the decrees are not examined separately, nor approved motu proprio and ex certa scientia.

(*b*) In forma specifica, which takes place when all the acts and decrees are accurately reviewed, and confirmed motu proprio and ex certa scientia.

9. The confirmation or approbation in forma communi adds no authority whatever to the decrees of National Councils. The approbation in forma specifica causes them to acquire the force of universal laws of the Church.

10. While, therefore, it is not lawful for any jurist to attack the decrees of a National Council approved in forma specifica, it may be lawful to question them when the approbation is given only in forma communi.

11. The decrees of National Councils, when approved of by the Holy See in forma communi only, can, according to many theologians, be relaxed by the several bishops or archbishops of the countries for which they were enacted. (See KENRICK, Theol. Mor. vol. i. p. 118, tract. iv. De Leg. Eccl. cap. vi.; KONING'S Theol. Moral. tract. De Leg. cap. vii. art. i. De Dispens.)

12. When, however, these decrees are ratified in forma specifica they become pontifical or universal laws, and can no longer be dispensed with by individual bishops and archbishops. (BENED. XIV. De Synod. Dioc. lib. xiii. cap. v. n. 10.)

13. It seems to be the generally received opinion that the Second Plenary Council of Baltimore was approved by the Holy See in forma specifica. Therefore no individnal bishop or archbishop of America can dispense with its decrees.

VI.

INSTRUCTIO EDITA JUSSU SACRAE CONGREGATIONIS DE PROPAGANDA FIDE DE CONJUGIIS.* ROMAE, 1821.

Venerabilibus Fratribus
Episcopis Vicariis Apostolicis
In Imperio Senarum, eique
adjacentibus Regnis, atque Provinciis.

VENERABILES FRATRES.

QUAESTIO de inordinatis, ac clandestinis, apud Sinas conjugiis non modo Vestra, Venerabiles Fratres, ingenia vexavit diu, Sacrorumque Operariorum, qui in difficili isto Dominico excolendo agro adlaborant; verum etiam S. hujus Congregationis studia non mediocriter exercuit. Atque id non eam unice ob causam, qua S. Augustinus Ecclesiae lumen obscurissimam de Conjugiis quaestionem, ejusdemque sinus fere inexplicabiles esse professus est; sed quod maxime dolendum, ob hominum corruptelas honorabilis Nuptiarum foederis speciem, ac pulchritudinem inobscurantes. *Magno* itaque *Sacramento* suus ut restituatur et constet honor, S. C. quaestionem hujusmodi bono in lumine collocare, ac definire tandem, sollicita, praesentem Instructionem parandam duxit Vobis, Ven. Fr. inscriptam, uti eam cum Missionariis,

* Nuper vero Illmo ac Revmo Petro Josepho Baltes, Episcopo Altoniensi, ad eandem Congregationem pro informatione de conjugiis quibusdam clandestinis recurrenti transmissa, ipsiusque Revmi Episcopi auctoritate ad usum Cleri suae dioecesis denuo typis impressa.

Parochis, ac Confessariis communicetis. Sed ordine res explicanda est ab initio.

I. Vestris equidem literis, ut bene meministis, pluries ad hanc S. C. datis, significastis: pravum inolevisse morem apud plurimos Christianos, tanto nomine indignos, ut post inita sponsalia, habitamque carnalem copulam cum muliere, cum alia inde Matrimonium contrahant, communibus servatis Imperii, atque usitatis ibi Ecclesiae ritibus. Qua de re anxie, ac pro charitate, qua erga oviculas flagratis Vestrae sollicitudini commissas, a Matre ac Magistra vestra postulastis invalescenti apud eas gentes morbo medelam consentaneam: et percontati estis, utrum primum illud conjunctionis genus, an alterum justi Matrimonii vim haberet, quando intra fines Imperii Sinici, ac circumjacentium Regnorum ac Provinciarum nondum esset Tridentinum de Matrimonio Decretum promulgatum.

II. Et S. quidem Congregatio Vos atque Operarios Vestros enixe hortata est, omnimodis ut niteremini qua privatis, qua publicis concionibus, ac praesertim in Sacramenti poenitentiae administratione deterrere Fideles a clandestinis matrimoniis, quae Sancta Dei Ecclesia justissimis de causis semper detestata est, atque prohibuit; et ex quibus gravia peccata ortum habent: maxime vero admonendos graviter, et sub interminatione Divini judicii eos, qui in statu damnationis permanent, dum priore uxore, cum qua contraxerant, relicta, cum alia palam contrahunt, et cum ea in perpetuo vivunt adulterio. Neque his contenta monitis ex limpidis S. Tridentinae Synodi fontibus deductis, ad propositi Dubii solutionem, ex

puris item fontibus Pontificii juris in omnes Catholicos pervulgatis observandam indixit a Gregorio IX. P. M. acceptam praescriptionem Capitis *Is qui* 30. *de Sponsal. et Matrim.* Interrogatus enim Pontifex, quid facto opus esset de homine, qui post inita cum muliere sponsalia, habitumque concubitum, aliam deinde in facie Ecclesiae duxerat, et cognoverat, hujusmodi responsum dedit. "Is qui fidem dedit alicui mulieri, quod eam in uxorem ducere velit, et si postea illam carnaliter cognoscat, aliamque in facie Ecclesiae ducat, ad primam redire tenetur: quia licet primum matrimonium praesumptum videatur, tamen contra talem praesumptionem probatio in contrarium non est admittenda. Unde sequitur quod Matrimonium postea de facto contractum non verum sit Matrimonium sed nullum." Hanc autem Praescriptionem S. C. Vestris studiis commendandam suscepit ab anno 1786. eamdemque anno 1804. V. F. Stephanus Borgia clarae memoriae Cardinalis Sacrae item Congregationis nomine ad Vestrum unum, nempe ad Vicarium Apostolicum Cochinchinae scribens, explicatius retinendam esse declaravit.

III. Jam vero tali tantoque remedio, consilioque a S. C. exhibito, futurum ea sperabat, ut justis illorum Christianorum conjugiis rite constabiliendis, clandestinisque cohibendis, opitulante Deo, nihil aut fere nihil superesset, quando post annos non paucos literas ejusdem Vicarii Apostolici Cochinchinae accepit, quibus praeter cetera significavit: Capitis *Is qui* observantiam eas in regiones vix aut ne vix quidem induci posse ob invincibilem Sinarum illius legis ignorantiam: ex Divini verbi praeconibus, qui erudi-

endae genti strenuam dant operam, extitisse fere neminem, qui docuerit, ex copula clandestina Sponsalia subsequente validum in Foro externo Matrimonium aestimandum: docere autem id deinceps asperum futurum ob gravissima inde incommoda pertimescenda, ac praesertim ob scandala tum apud Christianos, tum apud Gentiles oritura quorum firma persuasio est: Matrimonium justum constare nullum, nisi quod in conspectu Ecclesiae, vel civilis Imperii legis fuerit celebratum.

IV. Acceptis hujusmodi literis, S. C. non antea definiendum quidquam deliberavit, quam literis ad Vos omnes, Ven. Fr. missis, quibus, ut nostis, sciscitatum est de origine opinionum apud eas gentes circa nuptias justas, et illegitimas: de universa super Matrimoniis doctrina a Missionariis explicata: de ritu Ecclesiastico, ac civili nuptiarum: deque incommodis ac periculis extimescendis, si quando memorati Capitis *Is qui* apud Sinas observantia esset inducenda.

V. Et Vos quidem certiorem S. C. fecistis responsionibus fere inter se consentaneis: quae plene Eminentissimis Patribus satisfacere fortasse potuissent, nisi in re tanti momenti definienda, diligentia supra quam dici possit, maturitateque summa sibi opus esse existimassent. Aliae itaque literae S. C. nomine pervenerunt ad Vos, a Vobisque novae responsiones redditae, ex quibus Dubia, quae sequuntur, efformata sunt.

Dub. I. (quod in serie propositorum septimum est)—*An in Chinae, Cochinchinae, et Tunchini utriusque regionibus, in quibus Tridentinum de Matrimonio Decretum nondum promulgatum est, Copula sponsalia*

subsequens verum Matrimonium induci, etiamsi Sponsi inter coeundum non maritali affectu, sed libidine moti, existiment, se in illicitum ac fornicarium actum irruisse, Matrimonio justo constituendo imparem, ad propterea non sibi ereptam facultatem existiment ad alia vota transeundi, cum haec apud eas gentes persuasio vigeat?

Dub. II. (quod in serie octavum est)—*Quale consilium dandum Missionariis earum regionum circa modum servandum, praesertim in poenitentiae Sacramenti administratione, cum iis Fidelibus, qui post Sponsalia et copulam habitam cum una muliere, nuptias publice cum alia contraxerunt, quas ipsi bona fide justas existimant, validasque?*

Dub. III. (quod in serie nonum est)—*Vicariis Apostolicis, ac Missionariis remedium flagitantibus aptum ac cohibenda conjugia clandestina, et avertenda damna ex iisdem funestissima suboritura, quid consilii dandum, aut praescribendum sit?*

Ad haec clarius, atque accuratius enodanda Dubia juverit animadvertere: Eminentissimis Patribus incredibile videri, persuasionem in I. Dubio memoratam tantam vigere apud Sinenses, ut communis existimari possit: nempe ex Sponsalibus, et copula clandestine habita non iis ereptam esse facultatem ad alia voti transeundi. Etenim cum S. C. legem eo capite comprehensam explicandam iis gentibus, quoties sese occasio obtulisset, praescripserit; cumque compertum sit, quanto Vos studio ac sollicitudine S. C. consiliis, mandatisque morem gerere consueveritis; ac praeterea post accepta consilia, ac mandata hujusmodi, per nonnullos annos nihil a Vobis de persuasione illa renunciatum sit; jure Eminentissimi Patres arbitran-

tur, Missionarios ac Catechistas doctrinam Capitis *Is qui* non semper quidem, sed pro re nata tradidisse fidelibus nonnullis, hosque aliis, atque aliis tradere deinceps potuisse. Ac certe Vestrum unus narravit —Missionarium quemdam ceteris clarius coram multis hominibus primariis palam docuisse Sponsalia post copulam carnalem inter Sponsos habitam, ex legibus Ecclesiae judicari debere tamquam Matrimonia, nisi contrarium certo demonstretur —. Quo quidem facto facile intelligitur, alios Missionarios idem minus clare tradidisse, et primarios illos viros regulam Ecclesiae gravissimam facile cum aliis fidelibus communicasse. Erunt igitur non multi, sed erunt tamen, apud quos persuasio illa non vigeat; erunt plurimi, apud quos ea vigebit. Stabit ergo persuasio illa pede uno, cadet altero.

Videte igitur Ven. Fr., utrique Fidelium generi congruis consiliis, ac documentis providendum. Quod ut accurate succedat, ob oculos vestros proponite, quae in elucidando capite *Is qui* affert P. Pirhinghius Sacrorum Canonum explicator probatissimus. Nam que ille in *lib. IV. Decretal. Tit. I. Sect. I.* § 5. post memoratam Gregorii IX. regulam, seu praescriptionem, haec addit "Ratio est, quia Ecclesia ex carnali copula praesumit in sponsis conjugalem consensum ad excludendum peccatum, quod scilicet Sponsus et Sponsa non fornicario, sed affectu maritali se invicem cognoscere voluerint quia delictum non est praesumendum, et haec est praesumptio *Juris et de Jure*, id est omnino certa et indubitata, contra quam non admittitur probatio; et consequenter non audiretur Sponsus asserens, se non cognovisse Sponsam affectu

maritali, vel animo contrahendi Matrimonium cum illa. Covatr. in Epitome *Lib. IV. Decret. p. I. Cap. IV.* § 1. *num.* 1. *et* 2. Confirmatur, quia copula carnalis sequuta post Sponsalia de futuro est sufficiens signum consensus de praesente in Matrimonium ; et Sponsi per eam censentur sibi invicem tradere : quae præsumptio habet locum in Foro contentioso, et judiciali tantum, non autem in foro conscientiae, et poenitentiali. Unde si Sponsus vere cognovisset Sponsam non affectu maritali, sed fornicario, non esset verum matrimonium in foro poenitentiali, et coram Deo, quia Papa non potest facere, ut sine consensu expresso vel tacito sit verum Matrimonium. *Hostien. hic col.* 2. *in fine. Fagnan. hic. num.* 6. *et* 7." Hactenus P. Pirhinghius, qui hanc doctrinam exhibens, affirmat eamdem esse apud omnes Canonum tractatores pervulgatam. Hic igitur state, hic haerete. Nempe in iis etiam regionibus, in quibus Tridentinum de Matrimonio decretum promulgatum non est, si Sponsus ac Sponsa non maritali affectu, sed fornicario invicem coiverint, non ideo eorum Sponsalia in verum Matrimonium transire corum Deo ; ac propterea coram Deo, sive in Conscientiae foro, iisdem ereptam non esse facultatem ad alia transeundi Vota, si se legitima occasio praecedentium Sponsalium dissolvendorum obtulerit.

Ceterum in forum externum ac judiciale deducta si Copula sit, possent iidem ab Ecclesiastico judice legitimorum instar Conjugum haberi : atque idcirco, quoad alter eorum vixerit, a quovis alio matrimonio prohiberi, quia est haec praesumptio *juris et de jure*, id est certa omnino et indubitata, contra quam non

admittitur probatio: et consequenter non audiretur Sponsus asserens, se non cognovisse Sponsam affectu maritali, vel animo contrahendi matrimonium cum illa.

Quae cum ita sint, septimo Dubio hac ratione S. C. respondendum censet: nempe — Si in praefatis Regionibus, ubi publicatum non fuit decretum S. Concilii Tridentini, duo Sponsi carnalem inter se deinde habeant copulam, eam tamen non ex affectu maritali, sed affectu illicito ac fornicario; haec eorum Copula minime transire facit praecedentia eorumdem Sponsalia in verum Matrimonium coram Deo; seu in foro conscientia liberi manent, atque poterunt, si praedicta eorum Sponsalia ex aliqua legitima causa dissoluta fuerint, nuptias alias licite inire. Nihilominus si eorum copula in foro externo, et judiciali probetur, poterunt iidem ex praesumptione *Juris et de Jure*, contra quam non admittitur probatio per Ecclesiasticam potestatem adigi ad se se habendos tamquam veros Conjuges, quibus, vivente Consorte, quodvis connubium interdictum sit, *ex Cap.* 30. *De Sponsalib. et Matrim.*

Sed gradus faciendus est ad alterum enodandum Dubium, quod octavum in serie propositorum est; scilicet—quale consilium dandum Missionariis earum Regionum circa modum servandum (praesertim in sacramenti poenitentiae administratione) cum iis Fidelibus, qui post Sponsalia, et Copulam habitam cum muliere, nuptias publice cum alia contraxerunt, quas ipsi bona fide justas existimant, validasque—cum hujusmodi poenitente hanc esse diligentiam, cautionemque observandam Eminentissimi Patres

censuerunt. Placide eundem interroget Confessarius; utrum cum prima illa muliere concubuerit affectu motus maritali; an affectu illicito ac fornicario. Si poenitens hoc alterum respondebit, in pace dimittet, nec de validitate Matrimonii deinceps contracti dubitationem ullam movebit. Si vero poenitens respondebit, se cum prima illa muliere affectu coivisse maritali, graviter admonebit, eum non alterius esse maritum, sed primae, ad ipsamque redire omnino debere juxta saepe memoratam Capitis *Is qui* praescriptionem. Sed aliam quoque cautionem prae oculis habeant Missionarii: videlicet si accideret poenitentem hujusmodi in foro externo minime probare posse, carnalem copulam ab se cum prima muliere habitam, ac propterea adigeretur Ecclesiastici Praesidis judicio ad nuptias in conspectu Ecclesiae contractas in honore retinendas; id si accideret, deberet ille quamcumque poenam etiam excommunicationis tolerare patienter potius quam certus impedimento se irretiri ligaminis, cum altera non sine gravi culpa concumbat. Nota enim est Innocentii III. P. M. praescriptio *Cap.* 44 *de sent. Excom.* expressa—

"Si alter Conjugum (ita ille) pro certo sciat impedimentum Conjugii, propter quod sine peccato mortali non valet carnale commercium exercere quamvis illud apud Ecclesiam probare non possit . . . debet potius excommunicationis sententiam humiliter sustinere, quam per carnale commercium peccatum mortale operari."

Ex hactenus consideratis Responsum ad hujusmodi II. Dubium S. C. ita complexa est—Si quis Fidelium post Sponsalia et Copulam dein habitam

cum una Muliere, cum altera muliere publice Matrimonium contrahat: atque in hoc statu ad Missionarium aliquem in Tribunali Poenitentiae accedat, debebit eum interrogare; an Copulam istam cum illa prima Muliere habuerit ex affectu maritali, an vero ex affectu illicito et fornicario. Si alterum hoc respondebit, nullam de validitate praesentis sui Matrimonii dubium ei movebit. Sin autem primum respondebit, graviter ipsum commonebit, eum maritum esse non secundae sed primae mulieris, ad eamque redire omnino debere. Additur vero ad eorumdem Missionariorum instructionem; quod si forte homo iste probare non valens in foro externo carnalem copulam ab se habitam cum prima illa Muliere, cogeretur hinc per Ecclesiasticam Potestatem cum altera muliere remanere qua cum publice Matrimonium contraxit, deberet is poenam quamlibet, ipsamque Excommunicationem humiliter potius sustinere, quam cum altera hac muliere carnale commercium exercere non sine lethali culpa, ex *Cap.* 44. *de sent. Excom.*

Statuendum nunc, quid consilii dandum Vobis Ven. Fr., et Operariis, qui in Sinensi Dominico agro adlaborant, quo facilius feliciusque clandestinae cohibeantur conjunctiones, et praecidantur scandala, damnaque funestissima, quae suboriri ex iis possent: quod erat III. Dubio propositum. Certe negari non potest, maximam ad clandestinas conjunctiones praecidendas medelam ac praesidium in celebris Tridentini de Matrimonio decreti promulgatione ab Ecclesia collocari: et Apostolica quidem Sedes, quotiescumque conducere ea promulgatio Episcopis, atque Apostolicis Vicariis visa est, nihil reliqui fecit, quo facilem

iisdem se praeberet, atque hujusmodi medicinam tali consentaneam morbo praescriberet, quod fecit in Archiepiscopatu Kioviensi, cujus exemplum Vestrum unus in suis literis indigitavit, nempe Ven. Fr. Vicarius Apostolicus Cochinchinae. Verum de Kioviensi exemplo, quod ad rem nostram maxime facit, legendum est praeclarum Benedicti XIV. P. M. opus de Synodo Dioecesana *Lib. XII. Cap. V.* §§ 8. 9. 10, *et* 11.; ac legenda ita ejusdem Pontificis Constitutio *Etsi Pastoralis* § 8. *de Sacram. Matrim. num.* 1.— Curent Ordinarii locorum, ut Decretum S. Concilii Tridentini de reform. Matrim. in locis et Parochiis Graecorum et Albanensium, quoties expedire viderint, evulgetur et publicetur —. Sed certum quoque est, sicubi promulgatum id Decreti fuerit, ibique de praesentia Parochi praescriptum observari minime potuisset, quod vel Parochus deesset omnino vel difficile adiri posset, Apostolicam Sedem declarasse iis in locis testium praesentiam satis esse ad valide matrimonia constabilienda: quo si integrum Decretum observari non posset, quoad tamen posset, observaretur.

Jam vero Eminentissimi Patres in hujusmodi prudentem Apostolicae Sedis Oeconomiam animum interdentes: itemque considerate ac meditatio animo perpendentes literas a Vobis, Ven. Fr., iterato ad S. C. hac super re datas, circumspectantes etiam civiles, sacrasque rationes, et faciem ipsam Imperii Sinarum, quaeque eidem junguntur provinciarum atque regnorum; censuerunt, si id SSmo D. N. placuerit, ut quibus in locis id expedire maturo consilio judicaveritis, in iis Concilii decretum integrum rite promul-

gandum curetis, aut saltem quoad fieri licuerit, juxta regulas paulo ante traditas.

Quamobrem Omnia et singula matrimonia, quae posthac celebrari contigerit apud Sinas, ut valida nominentur et sint, ineunda erunt coram Parocho, aut Missionario, aut alio quovis legitime designato, ac duobus vel tribus, testibus, iisque quoad licuerit, Christianis. In iis vero locis in quibus integrum non posset promulgari Decretum, vel si promulgatum sit Parochus tamen, vel alius rite designatus absit, vel faciles ad eundem aditus non sint, iniri quidem possint conjugia, etsi absque Parocho, coram duobus saltem testibus, iisque si fieri possit Christianis; ita tamen contrahentes, ne Sacramenti dignitas vilescat, obligentur lege sistendi se coram Missionario vel Parocho quandocumque reduci, ut rite ab eo benedictionem accipiant. Missionarius autem vel Parochus redux, quando sibi de Consensu Conjugum constiterit, antequam Conjuges benedicat, eos condocefaciat, ejusmodi benedictionem ad ritum unice, non ad validitatem pertinere Conjugii; ac propterea non committet ille ut rursus consensio per nova verba exprimatur.

Tandem ne Decreti Tridentini memoria, jusque obsolescat, cupit S. C. ut quoties se dederit occasio Missionarii illud popularibus sibi commissis explicent, ac juxta regulas modo expositas declarent. Expedit enim, ut ipsae maxime adolescentulae virgines id perceptum habeant, ne in fraudem induci, et occultis, vimque nullam habituris nuptiarum promissis, se ad ullam pellici turpitudinem patiantur.

Atque haec via et ratio est, quam retinendo exis-

timat S. C. inordinatas ac clandestinas conjunctiones praefocari, Deo dante posse, ac *Magno Sacramento* suum honorem, unde apud plures deciderat, redintegrari.

Quam S. Congregationis sententiam SSmo Dno nostro PIO divina prov. Papae Septimo relatam per me infrascriptum Secretarium ejusdem Sacrae Congregationis in Audientia habita die 14. Januarii 1821. Sanctitas Sua benigne approbavit, et omnino servari jussit.*

Datum Romae ex Aedibus S. Congregationis die 17. Mensis, et anni quibus supra.

C. M. Pedicini Secretarius.

* This Instruction on Clandestine Marriages, and the utility of publishing the Decree of the Council of Trent, though given for China, is singularly applicable to the United States, as we explained in this book, ch. xxi. § 68.

VII.

Decree, issued for New Orleans and the United States, on Marriages, whether mixed or purely Catholic, contracted before Protestant Ministers and Magistrates.

Decretum.

Feria V. 9. *Septembris* 1824.

In Congregatione Generali S. Romanae et universalis Inquisitionis habita in Palatio Vaticano coram Ssmo Domino Nostro Leone Divina Providentia Papa XII. ac Eminentissimis et Illustrissimis Dnnis Cardinalibus Generalibus Inquisitionibus a Sancta Sede specialiter deputatis.

Relatae fuerunt Litterae Episcopi Novae Aureliae ad sanctam Congregationem de Propaganda Fide datae sub die 4. Aprilis 1822, quibus exponit in Neo-Aureliana Provincia, perinde ac in caeteris Provinciis Foederatae Americae, quotidie juxta civiles illarum Regionum leges, a Judicibus vel ab Acatholicis Ministris celebrari Matrimonia, inter quae non raro etiam mixta, seu Catholicos et Acatholicos, seque propterea gravissimis continuo vexari angustiis ob hujusmodi matrimoniorum clandestinitatem, ac legum jussa, ignorans, quid consilii capiendum sit, cum unus tantum ex Contrahentibus in se reversus, ac facti, vel erroris poenitens, petit Ecclesiae reconciliari, vel ad Catholicam convertitur fidem, renuente altero se subjicere Canonicis praescriptionibus exequendis.—Quapropter

ut a dubiis et anxietatibus circa matrimonia praefata, nec non circa modum se gerendi cum Conjuge resipiscente aut converso, quantum fieri potest, et se liberet et Missionarios; enixe rogat, ut in tota qua longe patet Neo-Aurelianensi Dioecesi (nimirum in Superiori, ac Inferiori Louisiana, ac in Floridis, caeterisque partibus olim Gallorum, vel Hispanorum ditione subjectis) Sanctitas sua declarare, atque statuere dignetur relate ad Matrimonia hujusmodi quod pro Hollandia et Foederato Belgio declaravit ac statuit Benedictus XIV.

Ssmus itaque Dominus Noster Leo XII. re mature perpensa, libratisque illarum Regionum circumstantiis, et auditis Eminentissimorum et Romanorum Cardinalium Generalium Inquisitorum suffragiis, Episcopi oratoris Votis et precibus annuens praesenti Decreto extendit ad totam, ut supra Neo-Aurelianensem Dioecesim Declarationem, a S. M. Benedicto XIV. datam die 4. Novembris 1741 Super dubiis respicientibus Matrimonia in Hollandia, et Belgio contracta et contrahenda.

INSTRUCTIO.

Exposuerat S. Congregationi de Propaganda in suis litteris 4. Aprilis 1822 Episcopus Novae-Aureliae in Foederata America.

1. Antiquiores illarum missionum Sacerdotes a se consultos, in ea esse opinione, quod Concilium Tridentinum numquam fuerit illic *sclemniter* publicatum.

2. Econtra, ejus in Episcopatu Praedecessorem, in suis Instructionibus in quodam manuscripto Codice contentis, licet non declarat, pro facto supponere,

tempore Gallicae, vel Hispaniae dominationis promulgatum fuisse Concilii Decretum.

Hinc 3. Se plane nescire, quid agendum cum in suae dioeceseos regionibus frequenter contingat, quin ob civiles qua ibi obtinet, leges, impediri id possit, a Judicibus, vel pseudoministris celebrari matrimonia mixta, et aliquoties etiam inter Catholicos, idque non solum ubi deest copia sacerdotis, sed etiam ubi adest Parochus. Atque idcirco

4. Si invalida declarentur ob Clandestinitatem Matrimonia hujusmodi, gravissima inde in tota Neo-Aurelianensi Dioecesi oritura incommoda, turbationes et anxietates tum Catholicorum fidelium, tum Episcopi, et Missionariorum, obveniente scilicet casu, quod alterutra tantum ex contrahentibus pars ad bonam frugem, vel ad fidem revertatur, perseverante altera in sua pervicacia, ac civilibus legibus freta, tam Separatione obsistenti, quam novi ad Tridentini formam Matrimonii celebrationi.

5. Hisce autem incommodis avertendis, spiritualique tot Conjugum saluti consulendi nullum aliud sibi videri suppetere medium, nisi quod auctoritate Pontificia in ea dioecesi dispensetur super Tridentino Clandestinitatis impedimento. Quapropter enixe postulabat, ut pro Matrimoniis, quae in illis regionibus contrahuntur, Summus Pontifex statueret ac declaret, quod statuerunt ac declararunt Benedictus XIV. pro Hollandia et Belgio, Pius autem VI. et Pius VII., pro Gallia tempore schismatis. En ejus verba: "Certe publicatum fuerat Concilium in Hollandia tempore Hispanicae Dominationis, cum vero in manus hereticorum transiit suprema auctoritas,

Sapientissimus Pontifex Benedictus XIV. illi benigne derogandum in hac parte duxit. Idem judicavere S. M. Pius VI. et Pius VII. pro matrimoniis in Gallia, schismatis tempore contractis.

"Quidni speraremus eadem lenitate nobiscum usuram Ecclesiam, cum eadem rationum momenta in gratiam hujus regionis militent."

Quibus omnibus relatis in Congregatione Generali Sanctae Romanae et Universalis Inquisitionis habita in Palatio Vaticano. Feria V. die 9. Septembris 1824 coram Ssmmo Domino Nostro Leone Divina Providentia Papa XII. Sanctitas sua, auditis Eminentissimorum ac Reverendissimorum Cardinalium Generalium Inquisitionis suffragiis extendendam censuit, prout ex hoc adjuncto extentionis decreto, ad totam Neo-Aurelianensis Dioecesim Declarationem Benedicti XIV. pro matrimoniis in Hollandia et Belgio. Quoad cetera vero in eisdem Episcopi litteris contenta, respondendum jussit sequenti instructione.

Ac primo, quoad Tridentini Decreti publicationem: Jam pro firmo teneri debet, tum ex Sacrarum Congregationum responsionibus, tum ex eorumdem Romanorum Pontificum decretis, ibi praesumendam eam esse, ubi constet Decretum illud fuisse aliquo tempore tamquam Decretum Concilii observatum. Porro observatum aliquando fuisse iis in regionibus cum Gallorum vel Hispanorum subdebantur imperio facile ostendi potest et quidem relate ad Hispanos: Adeo exploratum est, quanto religionis studio Hispaniarum reges, Concilio et Apostolicae Sedi obsequentes, in ejusdem Concilii publicationem in omnibus eorum ditionibus faciendam incubuerint, ac

quanta pariter sedulitate *concilianda** Decreta observari curarint Hispanarum ditionum antistites, ut nec vel minimum dubitari queat de ejusdem decreti in Hispanicis Americanicis regionibus observantia. Neque pariter locus est de hoc dubitandi relate ad Provincias quae Gallorum dominio subjiciebantur.

Constat enim, Galliarum regibus adeo cordi fuisse clandestina submovere matrimonia ut Ecclesiasticae legi subsidio venientes, observantiam *concilians*† decreti non solum regiis edictis indixerint, sed et inter leges recensuerint omnino servandas ubicumque eorum extendebatur imperium. Atque quo de Colonias. Quum ageretur anno 1764 sub Clemente XIII. de extendenda ad regiones Canadensem, et Quebeccensem memorata Benedicti XIV. declaratione, monumentis in causa allatis demonstratum fuit Tridentinum clandestinitatis impedimentum illis in coloniis tunc viguisse non secus ac in Gallia, ex quo inferendum, et in aliis quoque vigere quae partem nunc constituunt Neo-Aurelianensis dioecesis. Accedit et defuncti Episcopi testimonium, qui, ut refert Orator, in suis instructionibus pro facto supponit promulgatum ibi fuisse Tridentinum Decretum. Nec interest, quod non expresse id declaraverit. Supervacaneum namque duxit declarare, quod pro certo ac notorio tenebat.

Non valent autem neque missionariorum quos consuluit Episcopus, assertiones de non peracta solemne publicatione Concilii, neque execrandus ineun-

* "Concilianda" would seem to be a typographical mistake in the original. Read, "concilii."

† Read, "concilii."

dorum Matrimoniorum coram Judicibus vel Hereticis ministris abusus, ut inde inferri possit, non subsistere impedimentum clandestinitatis. Ex eo enim, quod praefati Missionarii opinentur non fuisse *solemniter* publicatum decretum de quo agitur, non sequitur, eos inficiari, ipsum fuisse aliquo tempore observatum ; ex observantia autem, ut supra monitum est, praesumitur publicatio. Caeterum pluris facienda est laudati defuncti Episcopi, quam dictorum Missionariorum auctoritas. Abusus vero contrahendi coram Judicibus vel Pseudoministris, haud quaquam probat, legem non existere, vel non obligare, sed probat tantum, quod maxime dolendum est, tam perditos inveniri Catholicos, qui sacrilego ausu divinas aeque ac ecclesiasticas leges palam conculcare non erubescant.

Hinc apparet, quid de hujusmodi matrimoniis sentiendum sit. Absurda autem et mali exempli foret generalis, quam expectare videtur Episcopus, dispensatio super clandestinitatis impedimento, extensive etiam ad catholicorum matrimonia. Neque ille gravate ferat, eam ab apostolica Sede denegari. Jam enim quoad matrimonia Haereticorum inter se, vel cum Catholicis seu mixta, quae praecipua sunt anxietatum ejus causa, ipse Episcopus, et Missionarii ab omnibus extricantur et liberantur angustiis per extensionem Benedictinae declarationis. Quoad vero matrimonia Catholicorum, id est, inter utramque partem Catholicam, latere non debet Episcopum, denegatam fuisse dispensationem etiam Canadensibus, et Quebeccensibus, licet ratione tum locorum, tum legum, tum religionis Dominantium, in similibus ac Neo-Aurelianenses, versarentur circumstantiis. Sequidem

Feria V. die 29. Novembris 1764 proposito dubio "*an praesens illarum regionum (Canadensis scilicet ac Quebeccensis) conditio exigere videantur ut Sancta Sedes generaliter dispenset ab observantia formae inductae a Concilio Tridentino Responsum prodiit Negative.*"

Neque pro Catholicorum matrimoniis ad rem faciunt laudatorum Pontificum declarationes, ac decreta pro Hollandia et Gallia. Ipse namque Benedictus XIV. expresse declarat (de Syn. Dioec. lib. 6. cap. 6. § 13) ea non comprehendi in suo pro Foederati Belgii Provinciis decreto "Matrimonia, inquit, Catholicorum in decreto non comprehensa facile intelliget quicumque advertat, illud nominatum restrictum esse ad ea Matrimonia, quae in praefatis regionibus vel inter duos contrahentes Haereticos, vel inter unam partem Catholicam, et alteram Haereticam contrahuntur." Reliqui autem duo Pontifices Pius VI. et Pius VII. haud quaquam pro Gallia *derogarunt* in hac parte Tridentino Concilio, sed tantum, et Episcopis concessere ad tempus facultatem dispensandi super Tridentini forma in Matrimoniis mixtis, et quoad Catholicos, declararunt casus, in quibus ex Ecclesiae mente cessare intelligitur ejusdem servandae formae obligatio, nempe tempore persecutionis, absente, vel latente legitimo Parocho, vel si difficile admodum foret ac periculosum ipsum adire "Quoniam, inquit Pius VI. in Instructione ad Episcopum Lucionensem data die 28. Maii 1792, *complures ex istis Fidelibus non possunt omnes Parochum legitimum habere, istorum profecto conjugio coram testibus et sine Parochi praesentia, si nihil aliud obstet, et valida, et licita erunt, ut saepius declaratum fuit a Sancta Congregatione Concilii Triden-*

tini interprete: Quas ecclesiastici Juris dispositiones nec ipse ignorat Episcopus. Scribit enim *Si id eveniret* quod scilicet contrahant Catholici vel inter se, vel cum Acatholicis coram Judicibus, aut Haereticis Ministris) solummodo in iis locis, ubi deest copia Sacerdotis, facilius ex nota mente Ecclesiae solveretur difficultas, sed frequenter etiam locum habet in iis, ubi adest *Parochus:* Hic itaque est casus, qui eum urget et vexat: Sed casus ad quem non extenduntur praefatae declarationes.

Verum et quoad hujusmodi catholicorum matrimonia hactenus contracta, providere volens summus Pontifex spirituali contrahentium saluti, una et Episcopum et missionarios a solicitudine qua fortasse afficiuntur, eximere, dummodo nullum aliud, praeter clandestinitatis, obstet impedimentum, ea in radice sananda esse decrevit atque apostolica auctoritate sanat, quin opus sit Conjuges ad novi Consensus praestationem admittere, tribuens propterea Episcopo facultates in casu opportunas et necessarias. Ad praecavenda autem jurgia, quae oriri hinc possent, ac ne alterutri, vel etiam utrique Conjugii dissolutionem,* curet Episcopus, ne iis conjugibus denuntietur initi matrimonii invaliditas antequam ad eorum notitiam pariter deducatur et sanatio. Exquirat itaque secreto prout fieri potest, accuratam horum matrimoniorum notulam et conjugum nomina, omniaque diligenter descripta cum adnotatione Pontificiae sanationis caute custodiantur, quemadmodum pro matrimoniis occultis, seu conscientiae praescribit Benedictus XIV. in sua constitutione: *Satis vobis* (die 27. Nov. 1741)

* Supply "causet."

Postulabat denique idem Episcopus edoceri se, et Missionarios, quomodo, posita hujusmodi matrimoniorum invaliditate, se gerere debeant "*erga eos qui post civile matrimonium jam consummatum, adhuc vivente Consorte, novum cum alio conjugium coram Nobis* (inquit) *inire poscerent. En autem rationes*, quae eum ancipitem tenent—*Si id fiat* (prosequitur) *sine civili repudio, Sacerdos se gravissimae poenae subjicit. Si requirat praevium repudium, dato quod obtineri possit, morem illum Antichristianum auctoritate sua, aut potius Ecclesiae sanctione consecrat. Verum aliunde quo jure potest huic se petitioni negare, si revera prius matrimonium nullum sit. Tunc enim ambae partes vere solutae sunt, et, utpote catholicae jus habent ad sacramenti receptionem.**

Ad hoc breviter respondetur. Si de matrimoniis catholicorum hactenus contractis fit sermo, jam praevisum per eorum sanationem, nec conjuges amplius resilire possunt, nec proinde ad novas cum aliis nuptias transire. Si vero sermo est de contrahendis: Confidit equidem Sanctitas sua futurum, ut in posterum Fideles ab Episcopo, et missionariis edocti, juxta ea quae tradit Benedictus XIV. in suis litteris "Redditae sunt nobis" P. Paulum Simonem a S. Joseph datis 27. Septembris 1746 nullum scilicet a se contrahi matrimonium per eum, quem coram magistratu civilem actum emittunt, ideoque conjugalem quam interim inter se haberent consuetudinem gravi culpa non carituram, ea qua debent docilitate obtempera-

* Compare Chap. XXI. § 63, where we show in what cases Catholics in the United States may apply for divorce, both absolute and partial.

turi sint Ecclesiae legibus ac Pastorum exhortationibus. Verum si tamen casus contingeret conjugalis consuetudinis post memoratum actum ante matrimonii coram Sacerdote celebrationem, sciat Episcopus non in sola ejus Dioecesi id evenire, sed ubicumque viget lex contractus civilis ; quia nullibi desunt, qui vel ignorantia, vel pravitate ea lege abutantur. In eodem ergo discrimine ac ipse versare possunt et aliarum regionum Pastores.

Primo itaque curent Episcopus et Missionarii utramque partem inducere ad catholice inter se contrahendum. Si vero utraque pars in hoc convenit, ut suam quaeque sibi vindicet libertatem, vel etiam, si una tantum id exposcerat, renuente altera, indicenda est eis separatio, et neutra admitti debet ad sacramenta, nisi separatione peracta, ut praescribitur de publicis concubinariis. Poscenti autem novum cum alio inire matrimonium suggerere, quod et sibi prius consulat, et ipsi Parocho, agendo scilicet ut et sibi civilis reddatur libertas, et Parocho nihil sit inde mali obventurum, non id esset civilis repudii morem approbare, dummodo rite instruatur postulans, id non ideo fieri, ut solvatur matrimoniale vinculum, quia nullo jam vinculo detinetur, sed tantum ut se ac Parochum a legalibus poenis, civilibusque vexationibus redimet. Eodem sensu, ac modo, quo toleratur primus actus civilis, expressio nempe consensus coram civili magistratu, tolerari potest et secundus, ut nimirum se partes eximant ab effectibus primi. Hisce vero penes Gubernium peragendis non se immiscere debent Missionarii. Qui nubere exposcit, ipse negotium suum agat.

Caeterum quod idem Benedictus XIV. in laudatis litteris docendos monet Fideles, sibi opportune aptent et Pastores, scilicet "*Si regionis consuetudini, et terreni Principis sanctionibus obtemperare coguntur, faciant quidem, sed Religione salva, potiusque ducant sanctissimas Ecclesiae leges, quibus matrimonia contringuntur.*"

VIII.

FACULTATES, QUÆ EPISCOPIS NOSTRIS CONCEDI SOLENT.

Facultates—Form. I.

1. "CONFERENDI ordines extra tempora et non servatis interstitiis usque ad presbyteratum incl., si sacerdotum necessitas ibi fuerit."

2. "Dispensandi in quibuscumque irregularitatibus, exceptis illis, quæ vel ex bigamia vera, vel ex homicidio voluntario proveniunt; et in his etiam duobus casibus, si præcisa necessitas operariorum ibi fuerit, si tamen, quoad homicidium voluntarium, ex hujusmodi dispensatione scandalum non oriatur."

3. "Dispensandi super defectu ætatis unius anni* ob operariorum penuriam, ut promoveri possint ad sacerdotium, si alias idonei fuerint."

4. "Dispensandi et commutandi vota simplicia in alia pia opera, et dispensandi ex rationabili causa in votis simplicibus castitatis et religionis." †

5. "Absolvendi et dispensandi in quacumque simonia; et in reali, dimissis beneficiis, et super fructibus male perceptis injuncta aliqua eleemosyna vel pœnitentia salutari arbitrio dispensantis, vel etiam retentis beneficiis, si fuerint parochialia et non sint qui parochiis præfici possint."

6. "Dispensandi in 3° et 4° consanguinitatis et affinitatis gradu simplici et mixto tantum, et in 2°, 3° et 4° mixtis, non tamen in 2° solo quoad futura ma-

* V. Fac. 3. inter Extr. C. † *Intrandæ.*

trimonia ; quod vero ad præterita etiam in 2° solo, dummodo nullo modo attingat primum gradum, cum his qui ab hæresi vel infidelitate convertuntur ad Fidem Catholicam, et in præfatis casibus prolem susceptam declarandi legitimam."

7. " Dispensandi super impedimento publicæ honestatis justis ex sponsalibus proveniente.

8. " Dispensandi super impedimento criminis, neutro tamen conjugum machinante et restituendi jus amissum petendi debitum."

9. " Dispensandi in impedimento cognationis spiritualis præterquam inter levantem et levatum."

10. " Hæ vero dispensationes matrimoniales videlicet 6ª, 7ª, 8ª et 9ª non concedantur, nisi cum clausula: *dummodo mulier rapta non fuerit, vel si rapta fuerit, in potestate raptoris non existat:* et in dispensatione tenor hujusmodi facultatum inseratur, cum expressione temporis ad quod fuerint concessæ."

11. " Dispensandi cum gentilibus et infidelibus plures uxores habentibus, ut post conversionem et baptismum, quam ex illis maluerint, si etiam ipsa fidelis fiat, retinere possint, nisi prima voluerit converti."

12. " Conficiendi Olea Sacra cum sacerdotibus, quos potuerint habere, et, si necessitas urgeat, etiam extra diem Cœnæ Domini."

13. " Delegandi simplicibus sacerdotibus protestatem benedicendi paramenta et alia utensilia ad Sacrificium Missæ necessaria, ubi non intervenit sacra unctio ; et reconciliandi ecclesias pollutas aqua ab Episcopo benedicta, et, in casu necessitas, etiam aqua non benedicta ab Episcopo."

14. "Largiendi ter in anno indulgentiam plenariam contritis, confessis ac sacra communione refectis."

15. "Absolvendi ab hæresi et apostasia a fide et a schismate quoscumque etiam ecclesiasticos tam sæculares quam regulares; non tamen eos qui ex locis fuerint ubi Sanctum Officium exercetur, nisi in locis missionum, in quibus impune grassantur hæreses, deliquerint, nec illos qui judicialiter abjuraverint,* nisi isti nati sint ubi impune grassantur hæreses, et post judicialem abjurationem illuc reversi in hæresim fuerint relapsi, et hos in foro conscientiæ tantum."

16. "Absolvendi ab omnibus censuris in Constitutione '*Apostolicæ Sedis moderationi*,' dd. 12 Oct. 1869 Romano Pontifici etiam speciali modo reservatis, excepta absolutione complicis in peccato turpi." †

* De hujus vocis significatione V. p. LXI. nota 2.

† Hæc facultas comprehendit omnes omnino censuras Constitutionis "*Apostolicæ Sedis*," excepta facultate absolvendi.

a) Complicem in peccato turpi.

b) Sacerdotem qui complicem absolvere præsumpserit (Decr. S. C. Inq. 17 Junii 1866), quam tamen facultatem (sc. absolvendi a *censuris* ET *pœnis* in C. Ben. XIV.: "*Sacramentum Pœnitentiæ*" et dispensandi super irregularitate a violatione dictarum censurarum contractâ) S. Sedes concessit "singulis Archiepiscopis, Episcopis ac Vicariis Apostolicis" Fœderatorum Statuum, sed 1° Ad quindecim casus tantum. 2° In propriâ Diœcesi vel Vicariatu exercendam, sive per se, sive per suum Vicarium Generalem, sive per idoneos confessarios a se vel a dicto Vicario 3° ad hoc *specialiter*, et 4° cum expressâ mentione Apostolicæ Auctoritatis deputandos, 5° favore eorum tantum sacerdotum, qui absque evidenti periculo provocandi fidelium scandalum censuras, quas complicem absolvendo incurrerunt, observare non valent, 6° "sub ea tamen lege, ut sic absoluti et dispensati infra

17. "Concedendi indulgentiam plenariam primo conversis ab hæresi atque etiam fidelibus quibuscumque in articulo mortis saltem contritis, si confiteri non poterunt."

18. "Concedendi indulgentiam plenariam in oratione 40 horarum ter in anno indicenda diebus episcopo bene visis, contritis et confessis et sacra communione refectis, si tamen ex concursu populi et expositione SSmi. Sacramenti nulla probabilis suspicio sit sacrilegii ab hæreticis et infidelibus aut offensionis a magistratibus."

19. "Lucrandi sibi easdem indulgentias."

20. "Singulis feriis secundis non impeditis officio IX. lectionum, vel eis impeditis, die immediate sequenti, celebrandi missam *de requie*, in quocumque

duos menses, vel aliud congruum tempus a dispensante decernendum, directe, vel per medium proprii confessarii, suppressis nominibus ad S. C. de Prop. Fide recurrere, eique explicare, *quot* personas complices in re turpi, et *quoties* a peccato complicitatis absolverint, et mandatis ejusdem S. Cong. desuper ferendis obedire teneantur, sub reincidentia in easdem censuras et pœnas, si contravenerint; 7° injuncta singulis pro modo culparum congruâ pœnitentia salutari, quodque ab audiendis personæ complicis confessionibus omnino abstineant, aliisque injunctis de jure injungendis." (Vide Conc. Pl. Balt II. p. CXLVI. I. Decr.)

c) Ab hæresi, ab apostasia in fide et a schismate in casibus, de quibus supra fac. 15.

d) Personam cujuscumque sexûs falso denunciantis sacerdotem aliquem de sollicitatione in Confessione. Decr. S. C. Inq. 17 Junii 1866.

Quibus sub conditionibus Episcopi nostri a simonia absolvere valeant, V. supra fac. 5.

altari, etiam portatili, et liberandi animas secundum eorum intentionem a purgatorii pœnis per modum suffragii."

21. "Tenendi et legendi, non tamen aliis concèdendi, præterquam ad tempus tamen iis sacerdotibus, quos præcipue idoneos atque honestos esse sciat, libros prohibitos, exceptis operibus Dupuy, Volney, M. Reghellini, Pigault, le Brun, De Potter, Bontham, J. A. Dulaure, Fêtes et courtisanes de la Grèce, Novelle di Casti, et aliis operibus de obscœnis et contra Religionem ex professo tractantibus." *

22. "Præficiendi parochiis regulares, eisque suos deputandi vicarios in defectu sæcularium, de concensu tamen suorum superiorum."

23. "Celebrandi bis in die, si necessitas urgeat, ita tamen ut in prima Missa non sumpserit ablutionem, — per unam horam ante auroram et aliam post meridiem,—sine ministro,—et sub dio et sub terra, in loco tamen decenti,—etiamsi altare sit fractum vel sine reliquiis sanctorum,—et præsentibus hæreticis, schismaticis, infidelibus et excommunicatis, —si aliter celebrari non possit. Caveat vero, ne prædicta facultate seu dispensatione celebrandi bis in die aliter quam ex gravissimis causis et rarissime utatur, in quo graviter ipsius conscientia oneratur. Quod si hanc eandem facultatem alteri sacerdoti juxta potestatem inferius apponendam communicare, aut causas utendi alicui, qui a Sancta Sede hanc facultatem obtinuerit, approbare visum fuerit, serio ipsius conscientiæ injungitur, ut paucis dumtaxat, iisque matu-

* V. Facult. 2. inter *Extraord. C.*

rioris prudentiæ ac zeli et qui absolute necessarii sunt, nec pro quolibet loco, sed ubi gravis necessitas tulerit, et ad breve tempus eamdem communicet aut respective causas approbet."

24. "Deferendi SSmum Sacramentum occulte ad infirmos sine lumine, illudque sine eodem retinendi pro eisdem infirmis, in loco tamen decenti, si ab hæreticis aut infidelibus sit periculum sacrilegii."

25. "Induendi se vestibus sæcularibus, si aliter vel transire ad loca eorum curæ commissa vel in eis permanere non poterunt."

26. "Recitandi rosarium vel alias preces, si breviarium secum deferre non poterunt, vel divinum officium ob aliquod legitimum impedimentum recitare non valeant."

27. "Dispensandi, quando expedire videbitur, super esu carnium, ovorum et lacticiniorum tempore jejuniorum et Quadragesimæ."

28. "Prædictas facultates communicandi, non tamen illas, quæ requirunt Ordinem Episcopalem, vel non sine Sacrorum Oleorum usu exercentur, sacerdotibus idoneis qui in eorum diœcesibus laborabunt, et præsertim tempore sui obitus, ut, sede vacante, sit qui possit supplere, donec Sedes Apostolica certior facta, quod quam primum fieri debebit, per delegatos vel per unum ex iis alio modo provideat, quibus delegatis auctoritate Apostolica facultas conceditur, sede vacante et in casu necessitatis, consecrandi calices, patenas et altaria portatilia Sacris Oleis, ab Episcopo tamen benedictis."

29. "Et prædictæ facultates gratis et sine ulla mercede exerceantur et ad decennium tantum con-

cessæ intelligantur, nec illis uti possit extra fines suæ diœcesis." *

Facultates Extraordinariæ C.

1. "Recitandi privatim, legitima concurrente causa, matutinum cum laudibus diei sequentis statim elapsis duabus horis post meridiem eamdemque facultatem ecclesiasticis viris sive sæcularibus, sive regularibus communicandi."

2. "Retinendi ac legendi libros ab Apostolica Sede prohibitos, etiam contra Religionem ex professo agentes, ad effectum eos impugnandi; quos tamen diligenter custodiat ne ad aliorum manus perveniant, exceptis astrologicis, judiciariis, superstitiosis ac obscœnis ex professo; eamdemque facultatem etiam aliis concedendi, parce tamen et dummodo prudenter præsumere possit nullum eos ex hujusmodi lectione detrimentum esse passuros."

3. "Dispensandi cum Diaconis utriusque cleri super defectu ætatis quatuordecim mensium, ut promoveri possint ad Sacerdotium, si alias idonei fuerint."

4. "Permittendi *parochis* sibi subjectis, dummodo justa et legitima causa concurrat, ut iis diebus festis, quibus Fideles Apostolica auctoritate soluti sunt ab obligatione Missam audiendi, ipsi ab applicatione pro populo abstinere valeant, dummodo pro eodem populo in ejusmodi Missa specialiter orent."

5. "Permittendi Catholicis sibi subjectis, ut feriis sextis, sabbatis aliisque diebus, quibus carnium esus

* I. e. non nisi favore subditorum suorum in diœcesi existentium, non quidem quando *executioni traditur*, sed quando *conceditur* gratia. Acta. Vol. II. p. 670.

vetatur, acatholicis, si in eorum mensa esse contigerit, carnes præbere valeant, dummodo tamen absit ecclesiasticæ legis contemptus et ejusmodi facultate sobrie multaque circumspectione utantur, ne scandalum in Catholicos vel heterodoxos ingeratur."

6. "Deputandi aliquem sacerdotem in locis sibi subjectis cum facultate consecrandi juxta formam in Pontificali Romano præscriptam calices, patenas et altarium lapides, adhibitis tamen Sacris Oleis ab Episcopo Catholico benedictis."

7. "Impertiendi quater in anno intra fines suæ diœcesis in solemnioribus festis Benedictionem Papalem, juxta formulam typis impressam atque insertam, cum indulgentia plenaria ab iis lucranda, qui vere pœnitentes, confessi ac Sacra Communione refecti eidem Benedictioni interfuerint, Deumque pro Sanctæ Fidei propagatione et S. R. E. exaltatione oraverint."

8. "Declarandi privilegiatum in qualibet ecclesia suæ diœcesis unum altare, dummodo aliud privilegiatum non adsit, pro cunctis Missæ Sacrificiis, quæ in eodem altari celebrabuntur a quocunque presbytero sæculari vel cujusvis ordinis regulari."

9. "Benedicendi coronas precatorias, cruces, sacra numismata iisque applicandi indulgentias juxta folium typis impressum atque insertum,* necnon erigendi Confraternitates B. M. V. de Monte Carmelo, SS^mi Rosarii et Bonæ Mortis cum applicatione omnium indulgentiarum et privilegiorum, quæ Summi Pontifices iisdem Confraternitatibus impertiti sunt; addita insuper potestate has facultates communicandi presbyteris sacro ministerio fungentibus."

* Vide Conc. Pl. Balt. II. p. 340. XXX.

10. "Erigendi in locis suæ diœcesis, in quibus non adsint PP. Franciscales, pium exercitium Viæ Crucis cum applicatione omnium indulgentiarum et privilegiorum, quæ Summi Pontifices ejusmodi exercitium peragentibus impertiti sunt, additâ insuper potestate hanc facultatem communicandi presbyteris sacro ministerio fungentibus."

11. "Promovendi Clericos sibi subditos ad Subdiaconatum aliosque Ordines Majores usque ad Presbyteratum inclusive titulo missionis, præstito tamen ab eisdem Clericis juramento * antequam Subdiaconi ordinentur, quo spondeant, ad instar Pontificiorum alumnorum, suæ diœcesi vel missioni se esse perpetuo inservituros."

12. "Delegandi benedictionem campanarum, quan-

* Formula juramenti hæc est: "Ego N. filius N. Diœcesis vel Vicariatus N. spondeo et juro, quod, postquam ad Sacros Ordines promotus fuero, nullam Religionem, Societatem aut Congregationem regularem sine speciali Sedis Apostolicæ licentia aut S. Congregationis de Prop. Fide ingrediar neque in earum aliquâ professionem emittam."

"Voveo pariter et juro, quod in hac Diœcesi aut Vicariatu, vel † in Missione, cui S. Sedi vel S. Congregationi de P. F. me destinare placuerit, perpetuo in divinis administrandis laborem meum ac operam sub omnimodâ directione et jurisdictione R. P. D. pro tempore Ordinarii pro salute animarum impendam, quod etiam præstabo, si cum prædictæ Sedis Ap. licentiâ Religionem, Societatem, aut Congregationem regularem ingressus fuero et in earum aliqua professionem emisero."

"Item voveo et juro, me prædictum juramentum et ejus obligationem intelligere et observaturum."

"Sic me Deus adjuvet et hæc Sancta Dei Evangelia."

† Juxta hunc alterum modum jurare debent, qui nondum alicui Missioni addicti fuerint.

documque eam ipsi absque gravi incommodo perficere nequeant, sacerdotibus sibi bene visis, servato ritu Pontificalis Romani, atque adhibitis Oleis et aqua ab Episcopo benedictis ; necnon sine aqua ab Episcopo benedicta, si gravis causa concurrat."

13. "Et prædictæ facultates gratis et sine ulla mercede exerceantur, nec illis uti possit extra fines suæ diœcesis."

Facultates Extraordinariæ D.

1. "Dispensandi super impedimento cognationis spiritualis inter levantem et levatum."

2. "Dispensandi in casibus occultis et in foro conscientiæ tantum super primo et secundo gradu simplici et mixto affinitatis ex copula illicita provenientis, in linea sive collaterali sive etiam recta, dummodo, si de linea recta agatur, nullum subsit dubium quod conjux possit esse proles ab altero contrahentium genita, tam in matrimoniis scienter vel ignoranter contractis, quam in contrahendis."

3. "Dispensandi cum subditis, exceptis Italis de quibus non constat Italicum domicilium omnino deseruisse, atque excepto insuper casu matrimonii cum viro vel muliere judæis, super impedimento disparitatis cultus, quatenus sine contumelia Creatoris fieri possit, et dummodo cautum omnino sit conditionibus ab Ecclesia præscriptis ac præsertim de amovendo a Catholico conjuge perversionis periculo, deque conversione conjugis infidelis pro viribus curandâ, ac de universa prole utriusque sexûs in Catholicæ Religionis sanctitate omnino educandâ: servata in reliquis adjecta instructione typis impressa."*

* Hanc V. Conc. Pl. Balt. II. p. 311. XIV.

4. "Dispensandi cum suis subditis, exceptis Italis de quibus non constat Italicum domicilium omnino deseruisse, super impedimento impediente mixtæ Religionis, dummodo cautum omnino sit conditionibus ab Ecclesia præscriptis prout in superiori No. 3."*

5. "Dispensandi in matrimoniis mixtis jam contractis, non item in contrahendis, super gradibus consanguinitatis et affinitatis, super quibus Apostolicam facultatem pro Catholicis jam obtinuit, quatenus pars Catholica, prævia absolutione ab incestus reatu et censuris, cum parte acatholica rite et legitime matrimonium contrahere de novo possit, prolesque suscepta ac suscipienda legitima declarari, dummodo cautum omnino sit conditionibus ab Ecclesia præscriptis prout in sup. No. 3."

6. "Sanandi in radice matrimonia contracta, quando comperitur adfuisse impedimentum dirimens, super quo ex Apostolicæ Sedis indulto dispensare ipse possit, magnumque fore incommodum requirendi à parte innoxia renovationem consensus, monitâ tamen parte conscià impedimenti de effectu hujus sanationis."

7. "Absolvendi contrahentes in omnibus et singulis casibus supra expositis, dummodo opus sit, ab incestus reatibus et censuris, imposita pro modo culparum congrua pœnitentia salutari, prolemque susceptam ac suscipiendam legitimam declarandi."

8. "Subdelegandi præsentes facultates suis Vicariis Generalibus, quoties ultra diem a propria residentia abesse debeat, atque duobus vel tribus presbyteris sibi benevisis in locis remotioribus propriæ

* Et dummodo, si de *contrahendis* agatur, aliud non obstet impedimentum dirimens, ut patet ex facultate proxime sequenti.

diœcesis, pro aliquo tamen numero casuum urgentiorum, in quibus recursus ad ipsum haberi non possit."

"Voluit autem Sanctitas Sua et omnino præcepit ut prædictus Episcopus superioribus facultatibus justis dumtaxat gravibusque accedentibus causis et gratis utatur, injuncta tamen aliqua congrua eleemosyna, in pium opus arbitrio ipsius Episcopi eroganda, atque ut, elapso decennio, de singulis dispensationibus concessis certiorare debeat Apostolicam Sedem."

Facultates Extraordinariæ E.

"Dispensandi in utroque foro cum Catholicis, ejus jurisdictioni subjectis, in matrimoniis sive contractis sive contrahendis, super sequentibus impedimentis":

1. "Super impedimento primi gradus affinitatis in linea collaterali ex copula licita provenientis pro" (v. c. decem) "casibus."*

2. "Super impedimento secundi gradus consanguinitatis vel affinitatis admixti cum primo in linea transversali pro" (v. c. sexaginta) "casibus."

3. "Super impedimento secundi gradus consanguinitatis vel affinitatis in linea transversali æquali pro" (v. c. centum) "casibus."

4. "Super impedimento publico primi gradus affinitatis, ex copula illicita provenientis, in linea sive collaterali sive etiam recta pro" (v. c. triginta) "casi-

* Numerus casuum, qui singulis Episcopis conceditur, varius est non tantum pro variis diœcesibus, sed etiam pro vario tempore concessionis in eâdem diœcesi eidemque Episcopo; ideo enim Episcopi S. Sedem, elapso decennio, ad quod facultates conceduntur, de singulis hujusmodi dispensationibus certiorare debent, ut pateat quibus facultatibus pro suâ speciatim diœcesi, et quo numero quisque indigeat.

bus, dummodo si de linea recta agatur, nullum subsit dubium quod conjux sit proles ab altero contrahentium genita."

"Insuper Sanctitas Sua prædicto Episcopo facultatem concessit in omnibus et singulis casibus superius expositis absolvendi contrahentes, dummodo opus sit, ab incestus reatibus et censuris, imposita pro modo culparum congrua pœnitentia salutari ac prolem tam susceptam quam suscipiendam legitimam declarandi."

"Voluit autem eadem Sanctitas Sua ac omnino præcepit, ut prædictus Episcopus iisdem facultatibus urgentissimis dumtaxat concurrentibus causis et gratis utatur, injuncta tamen aliqua eleemosyna, in pium opus arbitrio ipsius Episcopi eroganda."

"Tandem SS^mus Pater eidem Episcopo potestatem fecit prædictas facultates subdelegandi suis Vicariis Generalibus, quoties ultra diem a propria residentia abesse debeat, atque duobus vel tribus presbyteris sibi bene visis in locis remotioribus propriæ diœcesis, pro aliquo tamen numero casuum urgentiorum, in quibus recursus ad ipsum haberi non possit." (Ap. A. KONING'S Theol. Mor. vol. i. p. lxx.)

IX.

§ 1. ECCLESIASTICAL TRIALS IN THE UNITED STATES: PRIESTS SHOULD ALWAYS BE ASSOCIATED WITH BISHOPS IN CONDUCTING CAUSES: OATH ADMINISTERED TO THEM.

(Note to Chapter XXVIII. § 87.)

1. THE decree of the Council of St. Louis, which ordains that all causes of ecclesiastics shall be adjudicated upon by the ordinary and two priests selected by him, is evidently framed on the model of the following decree of the Council of Trent:

"The Holy Synod ordains that the decree, made under Paul III., of happy memory, beginning 'Capitula Cathedralium,' shall be observed in all cathedral and collegiate churches, not only when the bishop makes his visitation, but also as often as he proceeds ex officio, or at the petition of another, against any one. . . . Yet so, however, that . . . all the particulars subjoined shall have place: to wit, that the chapter shall, at the beginning of each year, select two individuals belonging to the chapter, with whose counsel and consent the bishop, or his vicar, shall be bound to proceed, both in instituting the process and in all other acts thereof, until the end of the cause inclusively—in the presence, nevertheless, of the notary of the said bishop, and in the bishop's house, or his ordinary court of justice.

"The two deputies shall, however, have but one vote; but either of them may give his vote in unison with that of the bishop.

"But if, as regards any proceeding, or as regards any interlocutory or definitive sentence, they shall both differ from the bishop, they shall in this case choose, in conjunction with the bishop, a third person, within the term of six days; and should they also not agree in the selection of that third person, the choice shall devolve on the nearest bishop; and the point whereon they differed shall be decided in accordance with the opinion which that third person sides with; otherwise, the proceedings, and what follows thereupon, shall be null, and of no effect in law." (Conc. Trid. sess. xxv. ch. vi. on Ref.)

2. This decree enacts:

(*a*) That two priests, selected by the chapter, shall assist the bishop in the trying of certain ecclesiastical causes.

(*b*) That they shall have but one vote.

(*c*) That in case they both differ from the bishop, a third person shall be selected, by mutual consent, in order to terminate the cause.

3. The decree of St. Louis, as will be seen, bears a striking resemblance to the above decree, as was already remarked by Kenrick. (Mor. vol. ii. p. 345.)

From all this it is evident that in the United States, bishops are not at liberty to try causes singly; but that they are bound to proceed with the advice and consent of two of their councillors, whose vote they cannot set at nought.

4. It has been asked, whether those two priests, whom the bishop associates with himself on ecclesiastical trials, are obliged to act under oath?

We reply, that canon law nowhere appears ex-

plicitly to require this oath. Yet as the above priests would seem to constitute an ecclesiastical jury, the analogy from the civil law may warrant this oath, whenever the bishop thinks it proper to administer the oath to them. But essential it is not.

5. That priests have always been associated with bishops in conducting ecclesiastical trials is unanimously asserted by canonists.

Soglia holds, that the bishop is bound to hear the advice of his chapter in punishing ecclesiastics, and in inflicting censures upon them. (Jus Eccl. vol. 2. lib. i. cap. iii.) Devoti tells us that in former times the archdeacon's tribunal had entire charge of all causes of the bishop's forum. (Inst. Can. tom. i. § viii. p. 166.)

6. Another celebrated canonist informs us, that in the earliest ages, as at present, all ordinary causes of ecclesiastics were decided upon by the bishop with the advice of his priests. (Walter, Jus Can. § 180.)

7. Benedict XIV. writes, that in conformity with the Council of Trent (sess. xxv. ch. x. on Ref.), judges of causes—judices causarum or judices synodales—shall be appointed in the synod (from among the clergy), to whom ecclesiastical and spiritual causes, belonging to the ecclesiastical court, shall be committed.

§ 2. CIVIL JURIES: ANALOGY BETWEEN CIVIL AND CANON LAW.

8. The two clerical members of the ecclesiastical court seem to correspond either to associate judges of civil courts, or also to civil juries.

In civil courts, trial by jury is prevalent throughout most countries. Juries are made up of men qualified by law to take cognizance of the facts in the suit, and give a fair and impartial opinion on them. The jurors, therefore, are judges of facts in the case.

9. These juries are thus described:

"The court awards a decree of venire facias upon the roll, or record, commanding the sheriff that he cause to come here, on such a day, twelve free and lawful men, liberos et legales homines, of the body of his county, by whom the truth of the matter may be better known; and who are neither of kin to the aforesaid A., nor the aforesaid B., to recognize the truth of the issue between the said parties." (BLACKST. Comment. bk. iii. ch. xxiii.)

10. Of the oath which is administered to jurors, this author thus writes:

"When the sufficient number of persons impanelled (from a little pane or oblong piece of parchment, on which their names were written), or talesmen appear, they are then separately sworn well and truly to try the issue between the parties; and a true verdict to give according to the evidence. Hence they are denominated the jury, jurata, and jurors, sc. juratores." (BLACKST. Comment. bk. iii. ch. xxiii.)

Again they are called "judges of facts." (Ib.)

11. These requisites are, in part at least, applicable to the two councillors selected by the bishop to examine into and determine upon facts in ecclesiastical causes.

§ 3. TESTIMONY GIVEN ON OATH IN ECCLESIASTICAL NO LESS THAN IN CIVIL CAUSES.

12. This oath—juramentum calumniæ—is that which is administered both to the plaintiff and to the defendant, as also to their procurators.

13. By it they promise to say but the truth, to do nothing in order to effect a corrupt judgment or unjust sentence, and not to advance any false or unnecessary proofs.

14. The oath is administered in all causes, spiritual no less than secular, in the first as well as in the second instance, or stage of proceedings.

15. If not demanded by the contestants, it may be omitted ; when, however, demanded by the parties in the suit, the evidence must invariably be given on oath ; otherwise the entire process is rendered null and void.

Some jurists hold that, in civil courts, this oath is always requisite ; others maintain that it is essential only when insisted upon, as above stated.

16. In ecclesiastical courts it may be neglected, and is, in fact, not unfrequently set aside.

But when called for by either of the contending parties, it would appear to be indispensable also in ecclesiastical tribunals. (Apud DEVOTI, Instit. Can. tom. ii. lib. iii. tit. viii.)

THE END.

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NOTE.—In consequence of the limited number of copies, this little work was originally bound in parts, so that the different portions might be used simultaneously in two or three classes. As the economy of this plan may serve to recommend it, the Lessons in Bible History will be sold either separately, or bound in one volume, as may be desired.

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